Noferi, Mark (EOIR)

From: (b) (6)
Sent: Sunday, April 29, 2018 9:40 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] What You Need To Know About The Loopholes That Prevent The Removal Of Many Dangerous Criminal Aliens

---------- Forwarded message ---------
From (b) (6)
Date: Sun, Apr 29, 2018 at 7:03 AM
Subject: [immprof] What You Need To Know About The Loopholes That Prevent The Removal Of Many Dangerous Criminal Aliens
To: immprof@lists.ucla.edu <immprof@lists.ucla.edu>

https://www.whitehouse.gov/articles/need-know-loopholes-prevent-removal-many-dangerous-criminal-aliens/?utm_source=twitter&utm_medium=social&utm_campaign=wh

What You Need To Know About The Loopholes That Prevent The Removal Of Many Dangerous Criminal Aliens

April 26, 2018

WHAT: Loopholes in our immigration system created by judicial rulings have made it nearly impossible to remove many criminal aliens.

In drafting the Immigration and Nationality Act (INA), Congress included that criminal aliens convicted of any number of serious offenses referred to as aggravated felonies should be subject to immigration consequences. Federal courts, however, have created loopholes that prevent some serious criminal convictions from qualifying as aggravated felonies under the INA. As a result, the government is often unable to use the only grounds available to remove many criminal aliens.

For example, in California, a criminal alien found guilty of voluntary manslaughter, robbery, or child abuse would not necessarily be considered an aggravated felon. In Texas, a criminal alien convicted of aggravated assault, deadly conduct, or causing injury to a child, elderly individual, or disabled individual would not necessarily qualify as an aggravated felon. In

Oklahoma, a criminal alien convicted of forcible sodomy or assault and battery on a police officer would not necessarily classify as an aggravated felon. As the law currently stands, no burglary crimes in California, Iowa, South Carolina, Oregon, Michigan, and Florida would qualify as an aggravated felony. Due to these judicially-created loopholes, criminal aliens convicted of these egregious crimes could potentially remain in the country.

Efforts to remove criminal aliens were further hamstrung by a recent Supreme Court decision that found unconstitutional a legal provision that was used to define which "crimes of violence" constitute aggravated felonies. In effect, the ruling invalidated a law that empowered Federal authorities to remove many violent felons from our communities.

WHY: Congress must take swift action to close loopholes in our immigration system that threaten the safety and security of American communities.

President Trump has repeatedly called on Congress to close the judicially-created loopholes in our immigration system, including the aggravated felony loophole, in order to help keep Americans safe. In October 2017, the Administration released its immigration priorities which called on Congress to clarify the aggravated felony definition. The Administration also endorsed a bipartisan proposal this February which would have fixed the aggravated felony loophole.

Calls to fix to the aggravated felony definition have been further echoed by numerous Federal judges. For example, a judge on the Ninth Circuit described the current system as "bizarre and arbitrary" and noted it allows criminals to "escape the consequences that Congress intended."

Congress needs to act, plain and simple. Without a legislative fix, Federal authorities will remain unable to remove violent criminal aliens, jeopardizing the safety and security of our communities.

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Sunday, April 29, 2018 9:40 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] NIJC Urges Sessions to Uphold U.S. Law as he Unilaterally Reviews Settled Asylum Cases

---------- Forwarded message ---------
From (b) (6)
Date: Fri, Apr 27, 2018 at 4:47 PM
Subject: [immprof] NIJC Urges Sessions to Uphold U.S. Law as he Unilaterally Reviews Settled Asylum Cases
To (b) (6)
Cc

Dear All,

The Law Professors brief in Matter of A-B- is excellent. Congratulations to all of you who crafted that argument! NIJC wrote separately to address some of the procedural issues with the AG certification process. Our press release and the link to our brief is below.

(b) (6)

National Immigrant Justice Center

A HEARTLAND ALLIANCE Program

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NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

FOR IMMEDIATE RELEASE

Contact (b) (6)
(b) (6)

NIJC Urges Attorney General Sessions to Uphold U.S. Law as he Unilaterally Reviews Settled Asylum Cases

Chicago (April 27, 2018) – The National Immigrant Justice Center (NIJC) filed a friend-of-the-court brief today with U.S. Attorney General Jeff Sessions, challenging his recent efforts to unilaterally reevaluate a settled immigration court case, which could have implications for a broad range of asylum seekers.

The case at issue, known as *Matter of A-B-*, involves a domestic violence survivor who fled to the United States after she was unable to obtain protection in her own country. Although the Board of Immigration Appeals (BIA) had granted asylum to the woman, identified only as A-B-, Attorney General Jeff Sessions certified the case to himself for consideration of broader issues impacting a wide range of asylum claims. Such power is authorized to the attorney general but has seldom been used in recent decades. Attorneys general typically defer to the BIA and the federal courts to interpret immigration law.

"The certification of this case was alarming because the question on which the attorney general requested briefing suggested he is contemplating ending asylum protection for survivors of violence by non-state actors," said Managing Attorney Ashley Huebner. "In addition to domestic violence survivors like A-B-, such a move also could affect groups fleeing genocide by other ethnic groups, witnesses to human rights abuses targeted by the perpetrators, and individuals fleeing harm due to their sexual orientation or gender identity."

Immigration attorneys and attorneys for the Department of Homeland Security all have agreed the question posed by the attorney general appears to address a settled area of law. It is well-established that harm by a non-state actor can be a basis for asylum if the government in the country of origin is unable or unwilling to control the persecutor.

To further complicate matters, in Attorney General Sessions' recent requests for briefing on *A-B-* and two other cases he certified to himself, he has refused to provide any information about the underlying cases, including the names of the attorneys of record. This unorthodox approach has left attorneys to guess at the context in which he is reconsidering these cases. In the case of *A-B-*, who fortunately was represented, her attorney stepped forward after the attorney general's announcement and shared some case information with potential amici curiae. NIJC's amicus brief aims to both address the fundamental flaws in this process and offer a legally accurate way the attorney general can answer the question he posed in his certification.

"While the process the attorney general has established offers the patina of legitimacy, it is deeply troubling," said NIJC Associate Director of Legal Services Lisa Koop. "It appears designed to foreclose asylum protection to groups of people whom courts at all levels have long recognized as eligible and deserving of protection. In NIJC's brief, we help the attorney general answer the question he has raised in a way that honors U.S. immigration laws and the United States' obligations to refugees."

NIJC's brief is one of multiple briefs filed by a range of groups including former immigration judges and BIA members, immigration law professors, faith-based organizations, and women's rights organizations. A-B- is represented by attorney Andres Lopez, attorney Ben Winograd of the Immigrant Appellate Resource Center, and the Center for Gender and Refugee Studies. NIJC's brief is available here.

Link to this press release online. http://immigrantjustice.org/press-releases/nijc-urges-attorney-general-sessions-uphold-us-law-he-unilaterally-reviews-settled

The National Immigrant Justice Center (NIJC) is a nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education. Visit immigrantjustice.org and follow @NIJC.

Connect with NIJC:

DONATE TAKE ACTION

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Tuesday, May 1, 2018 6:47 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: JUSTICE DEPARTMENT ANNOUNCES FIRST CRIMINAL ILLEGAL ENTRY PROSECUTIONS OF SUSPECTED CARAVAN MEMBERS

---------- Forwarded message ---------
From: (b) (6)
Date: Tue, May 1, 2018 at 12:33 AM
Subject: [immprof] FW: JUSTICE DEPARTMENT ANNOUNCES FIRST CRIMINAL ILLEGAL ENTRY PROSECUTIONS OF SUSPECTED CARAVAN MEMBERS
To: immprof@lists.ucla.edu <immprof@lists.ucla.edu>

FYI. Sent to me by a CBS reporter – I haven't seen any official statement on any DOJ web sites yet.

(b) (6)

JUSTICE DEPARTMENT ANNOUNCES FIRST CRIMINAL ILLEGAL ENTRY PROSECUTIONS OF SUSPECTED CARAVAN MEMBERS

WASHINGTON--The Department of Justice today filed criminal charges against eleven different suspected members of the so-called "caravan" in the United States District Court for the Southern District of California, announced Attorney General Jeff Sessions and U.S. Attorney for the Southern District of California Adam Braverman. All defendants are alleged to have illegally entered the country in violation of 8 U.S.C § 1325, and one defendant is also alleged to have been previously deported and was charged with 8 U.S.C § 1326 (illegal reentry).

"When respect for the rule of law diminishes, so too does our ability to protect our great nation, its borders, and its citizens," said Attorney General Jeff Sessions. "The United States will not stand by as our immigration laws are ignored and our nation's safety is jeopardized. U.S. Attorney Adam Braverman and his team should be commended for quickly filing illegal entry charges for individuals apprehended along the southwestern border. We will continue to work with our partners in each U.S. Attorney's Offices to aggressively pursue prosecutions of criminal illegal entry."

"The American Dream has beckoned immigrants from across the globe because of the promise that prosperity and success are within reach for all," said United States Attorney for the Southern District of California Adam L. Braverman. "Those immigrants have contributed their voices and perspectives to make up our uniquely American experience. But the foundation for the American Dream, and what allows our democracy to flourish, is commitment to the rule of law. These eleven defendants face charges now because they believed themselves to be above the law. Those seeking entry into the United States must pledge fidelity to the law, not break them, or else face criminal prosecution."

According to the complaints, defendants were apprehended by Border Patrol in the following areas known as: Goat Canyon, 35 Draw, Eucci Grove, and W-8. Goat Canyon, 35 Draw, and Eucci Grove are approximately four miles

west of the San Ysidro, California Port of Entry, and W-8 is approximately two miles west of San Ysidro. The complaints allege that the defendants knowingly and willingly entered into the United States at a time and place other than as designated by Immigration Officers, and eluded examination and inspection by Immigration Officers.

A complaint contains allegations, and a defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.
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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Tuesday, May 8, 2018 2:34 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: Miller v. Sessions
Attachments: Dorna Miller v Sessions (9th Cir. May 8 2018).pdf

---------- Forwarded message ---------
From: Dan Kowalski <dkowalski@david-ware.com>
Date: Tue, May 8, 2018 at 2:24 PM
Subject: [immprof] FW: Miller v. Sessions
To: Immigration Law Professors List <immprof@lists.ucla.edu>

From: (b) (6)
Sent: Tuesday, May 08, 2018 10:26 AM
To: Dan Kowalski
Subject: Miller v. Sessions

Hi Dan,

It is not yet on the Ninth Circuit's website, but this morning, I received notice from the Court that, in a published decision, a non-citizen who was subjected to reinstatement, may file a motion to reopen seeking to collaterally attack the underlying removal order that was entered in absentia. The case is Miller v. Sesssions, No. 15-72645 (Judge Watford authored the opinion, joined by Judge Friedland and Judge Rakoff). This holding builds on a footnote in Morales-Izquierdo v. Gonzales, 486 F.3d 484, 496 (9th Cir. 2007), which had contemplated this situation. The client is very happy with the outcome.

I'm sending you the copy of the decision that I obtained from PACER.

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DORNA ALICIA MILLER, *Petitioner*, v. JEFFERSON B. SESSIONS III, Attorney General, *Respondent.*	No. 15-72645 Agency No. A097-344-335 OPINION

On Petition for Review of an Order of the Board of Immigration Appeals

Argued and Submitted March 15, 2018
San Francisco, California

Filed May 8, 2018

Before: Paul J. Watford and Michelle T. Friedland, Circuit Judges, and Jed S. Rakoff,* Senior District Judge.

Opinion by Judge Watford

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* The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

SUMMARY**

Immigration

The panel granted Dorna Alicia Miller's petition for review of a decision of the Board of Immigration Appeals and remanded, holding that 8 U.S.C. § 1231(a)(5), which governs reinstatement of removal orders, does not deprive an immigration court of jurisdiction to resolve a motion to reopen a removal order issued *in absentia*, where the motion is based on a claim of lack of notice of the individual's removal hearing.

The case required the panel to interpret the interplay between two provisions of the Immigration and Nationality Act. One provision, 8 U.S.C. § 1229a(b)(5), authorizes immigration judges to order non-citizens removed from the country *in absentia* under certain circumstances, but also provides a fail-safe mechanism: If the individual can show that she never received notice of the hearing, she may seek to rescind a removal order entered *in absentia* by filing a motion to reopen "at any time." § 1229a(b)(5)(C)(ii).

The other provision at issue, 8 U.S.C. § 1231(a)(5), applies to non-citizens who are ordered removed, leave the United States while under the order of removal, and reenter the country illegally. In that scenario, the Department of Homeland Security may reinstate the prior removal order through a summary proceeding that does not involve a hearing before an immigration judge. The provision also

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

states that when an order is reinstated, the prior removal order "is not subject to being reopened or reviewed."

After Miller was ordered removed *in absentia* in 2004, she was apprehended attempting to reenter the United States, and the DHS reinstated her 2004 removal order. After expressing a fear of returning to El Salvador during her reinstatement proceedings, her case was referred to an immigration judge, who granted withholding of removal. Miller then filed a motion to reopen seeking to rescind her 2004 order so that she could seek asylum, which confers a broader set of rights than withholding of removal and is not available during reinstatement proceedings. Citing § 1231(a)(5), the immigration judge denied Miller's motion on the ground that he lacked jurisdiction to consider it, and the BIA affirmed.

As a threshold matter, the panel held that it had jurisdiction to consider whether Miller could seek rescission based on lack of notice, rejecting the government's contention that Miller failed to exhaust the issue by not citing the correct subsection of § 1229a(b)(5)(C). The panel concluded that Miller had sufficiently exhausted the issue by repeatedly raising "lack of notice" in her brief to the BIA, and by referring to the statutory authority to seek reopening "at any time."

The panel held that § 1231(a)(5) does not bar immigration judges from entertaining a motion to reopen an *in absentia* removal order under § 1229a(b)(5)(C)(ii). The panel acknowledged that the government's contrary interpretation of § 1231(a)(5) is not foreclosed by the text of the statute. However, the panel concluded that such a reading of the statute would raise potential due process concerns, at least in

circumstances, like those present in this case, in which the non-citizen first learns of the prior removal order at the outset of the reinstatement proceeding. Specifically, the panel noted that the court has held that due process challenges to the underlying removal order, even those predicated on lack of notice, generally may not be raised in the reinstatement proceeding itself. Thus, the panel concluded that, if the court adopted the government's reading of § 1231(a)(5), a non-citizen whose due process rights were violated in the earlier removal proceedings due to lack of notice could have the resulting removal order reinstated against her without ever being afforded an opportunity to challenge its legality.

In sum, the panel held that, while an individual placed in reinstatement proceedings under § 1231(a)(5) cannot as a general rule challenge the validity of the prior removal order in the reinstatement proceeding itself, she retains the right, conferred by § 1229a(b)(5)(C)(ii), to seek rescission of a removal order entered *in absentia*, based on lack of notice, by filing a motion to reopen "at any time."

COUNSEL

Kari E. Hong (argued), Boston College Law School, Newton, Massachusetts, for Petitioner.

Aimee J. Carmichael (argued), Trial Attorney; Mary Jane Candaux, Assistant Director; Office of Immigration Litigation, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

WATFORD, Circuit Judge:

This case requires us to interpret the interplay between two provisions of the Immigration and Nationality Act. One provision, 8 U.S.C. § 1229a(b)(5), authorizes immigration judges to order non-citizens removed from the country *in absentia*—that is, in the person's absence. Such orders may be entered when a non-citizen is directed to appear at a removal hearing but fails to show up, provided the government proves that it gave written notice of the hearing as required by statute and that the non-citizen is in fact removable. § 1229a(b)(5)(A). That rule would lead to obvious unfairness (and potential due process problems) if it were applied to someone who never actually received the required notice. So the statute provides a fail-safe mechanism: If the individual can show that she never received notice of the hearing, she may seek to rescind a removal order entered *in absentia* by filing a motion to reopen "at any time." § 1229a(b)(5)(C)(ii).[1]

---

[1] Section 1229a(b)(5)(C) provides in relevant part:

> [A removal order entered *in absentia*] may be rescinded only—
>
> (i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1)), or
>
> (ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section

The other provision at issue here is 8 U.S.C. § 1231(a)(5). That provision applies to non-citizens who (1) are ordered removed, (2) leave the United States while under the order of removal, and (3) reenter the country illegally. In that scenario, the Department of Homeland Security (DHS) may reinstate the prior removal order through a summary proceeding that does not involve a hearing before an immigration judge. *See* 8 C.F.R. § 241.8(a). When DHS reinstates a removal order pursuant to § 1231(a)(5), the prior removal order "is not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5).[2]

The question presented in this case is what happens when these two statutory provisions collide? If DHS reinstates a removal order that was entered *in absentia*, can the non-citizen still file a motion to reopen under § 1229a(b)(5)(C)(ii) "at any time" on the ground that she never received notice of the prior hearing? Or does § 1231(a)(5) preclude such a motion by directing that the prior removal order "is not subject to being reopened or reviewed"?

> 1229(a) of this title or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

[2] Section 1231(a)(5) provides:

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

This issue arises in a case involving Dorna Miller, a native and citizen of El Salvador who fled her home country after suffering horrific abuse there on account of her race. She entered the United States unlawfully in March 2004 and was promptly apprehended by immigration officials. They gave her a written notice ordering her to appear at a hearing before an immigration judge "on a date to be set at a time to be set." When Miller was released from detention, she gave an immigration official the address at which she would be residing, to which all future notices should be sent. Officials subsequently mailed several notices to that address, informing Miller that her removal hearing had been set for May 7, 2004. She says she never received the notices, and the record contains evidence to support her account as the notices were returned with the notation "not deliverable as addressed." (It appears that the government sent at least some of the notices to the incorrect zip code.) When Miller failed to appear for her hearing on May 7, the immigration judge ordered her removed to El Salvador *in absentia*. Miller says she never received a copy of the judge's decision and thus did not know that she had been ordered removed.

Years passed without any further contact from immigration officials. In 2011, Miller voluntarily moved to Canada with her family to seek refugee status there, but the Canadian government denied her request. In September 2013, Miller unlawfully attempted to reenter the United States. She was apprehended at the border, and immigration officials quickly discovered that she had been ordered removed in May 2004. Miller says this encounter is the first time she learned of her removal order. DHS immediately reinstated her May 2004 removal order under § 1231(a)(5). The government also charged Miller with the criminal offense

of illegal reentry in violation of 8 U.S.C. § 1326(a), to which she later pleaded guilty.

During the reinstatement proceeding, Miller did not challenge the validity of her May 2004 removal order, but she did express a fear of returning to El Salvador given the past abuse she had experienced there. An asylum officer interviewed Miller, found that she had a reasonable fear of persecution in El Salvador, and referred her case to an immigration judge for a hearing to determine whether she should receive withholding of removal. *See* 8 C.F.R. § 208.31(e). In April 2014, the immigration judge granted Miller that relief.[3]

In July 2014, after her reinstatement and criminal proceedings had concluded, Miller filed a motion to reopen seeking to rescind her May 2004 removal order. She sought rescission of the order so that she could apply for asylum, which confers a broader set of rights than withholding of removal does. The immigration judge denied her motion on the ground that he lacked jurisdiction to consider it, citing § 1231(a)(5)'s command that when a prior removal order is reinstated, the order "is not subject to being reopened or reviewed." The Board of Immigration Appeals (BIA) affirmed the immigration judge's ruling, and Miller then filed a petition for review in our court.

As a threshold matter, the government argues that we lack jurisdiction to consider whether Miller can seek relief under

[3] Non-citizens placed in reinstatement proceedings may seek withholding of removal, but they are not eligible for asylum, which is the relief Miller seeks here. *See* 8 C.F.R. § 241.8(e); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1070 (9th Cir. 2016).

§ 1229a(b)(5)(C)(ii) because she failed to raise that issue before the BIA. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). The government contends that when Miller was before the immigration judge, she sought relief only under § 1229a(b)(5)(C)(i), which authorizes the filing of a motion to reopen based on "exceptional circumstances" rather than on lack of notice. *See* n.1 above. But in her brief to the BIA, Miller repeatedly raised "lack of notice" as one of the grounds for her motion to reopen, and she argued that the Immigration and Nationality Act "authorizes a non-citizen ordered removed in absentia to seek reopening 'at any time' if the failure to attend proceedings was due to lack of notice." The reference to statutory authorization to seek reopening "at any time" due to lack of notice is a specific reference to the relief authorized under § 1229a(b)(5)(C)(ii). We therefore conclude that Miller "put the BIA on notice" of the jurisdictional basis for her motion, such that the BIA "had an opportunity to pass on this issue." *Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004) (per curiam). This was sufficient to exhaust the issue. *Id.*

Because the issue before us turns on a question of law—whether § 1231(a)(5) bars immigration judges from entertaining a motion to reopen under § 1229a(b)(5)(C)(ii)—we review the BIA's ruling *de novo*. *See Lezama-Garcia v. Holder*, 666 F.3d 518, 524 (9th Cir. 2011). The BIA's decision is unpublished and was issued by a single member, so it is not entitled to deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), although it is entitled to deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), "proportional to its thoroughness, reasoning, consistency, and ability to persuade." *Lezama-Garcia*, 666 F.3d at 524–25 (internal

quotation marks omitted). The BIA's decision contains no reasoning of any substance on the issue we consider here, so there is nothing for us to defer to.

We conclude that the BIA wrongly held that the immigration judge lacked jurisdiction to consider Miller's motion to reopen. We acknowledge at the outset that the government's interpretation of § 1231(a)(5) is not foreclosed by the text of the statute. It's possible that Congress intended to bar collateral attacks on a prior removal order whenever DHS decides to invoke the reinstatement procedure, even if the prior order was entered *in absentia* and the non-citizen received no notice of the earlier hearing. But that reading of the statute would raise potential due process concerns, at least in circumstances, like those present in this case, in which the non-citizen first learns of the prior removal order at the outset of the reinstatement proceeding. For we have held that due process challenges to the underlying removal order, even those predicated on lack of notice, may not be raised in the reinstatement proceeding itself. *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 496 (9th Cir. 2007) (en banc). Thus, if we adopted the government's reading of § 1231(a)(5), a non-citizen whose due process rights were violated in the earlier removal proceedings due to lack of notice could have the resulting removal order reinstated against her without ever being afforded an opportunity to challenge its legality.

In *Morales-Izquierdo*, we interpreted §§ 1231(a)(5) and 1229a(b)(5)(C)(ii) to avoid this constitutional dilemma. *See Clark v. Martinez*, 543 U.S. 371, 380–81 (2005). In that case, the petitioner challenged the constitutionality of the reinstatement procedure authorized under 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8, arguing, among other things, that he had not received adequate notice of the hearing

at which his original removal order had been entered *in absentia*, and that allowing immigration officers rather than judges to resolve that issue would violate due process. We held that the petitioner suffered no prejudice by being denied access to an immigration judge in the reinstatement proceeding because he would not have been able to litigate issues concerning lack of notice in that proceeding anyway. Citing § 1231(a)(5), we noted that "the reinstatement statute specifically precludes Morales from seeking to reopen the previous removal order based on defective service or any other grounds." 486 F.3d at 496. But in a footnote immediately following that statement, we said:

> The [Immigration and Nationality Act] does have a procedure an alien may use to reopen an in absentia removal order based on a claim of lack of notice, *see* INA § 240(b)(5)(C)(ii), 8 U.S.C. § 1229a(b)(5)(C)(ii), but Morales has failed to avail himself of it.

Id. at 496 n.13. We referred to § 1229a(b)(5)(C)(ii) again later in the opinion, when we explicitly held that reinstating a removal order under § 1231(a)(5) "creates no new obstacles to attacking the validity of the removal order," and cited as one example of an avenue of attack that remains open "8 U.S.C. § 1229a(b)(5)(C)(ii) (allowing reopening of a removal order based on lack of notice)." 486 F.3d at 498. As these references to § 1229a(b)(5)(C)(ii) make clear, in *Morales-Izquierdo* we construed § 1231(a)(5) as preserving a non-citizen's right to file a motion to reopen under § 1229a(b)(5)(C)(ii).

Thus, an individual placed in reinstatement proceedings under § 1231(a)(5) cannot as a general rule challenge the

validity of the prior removal order in the reinstatement proceeding itself.[4] But she retains the right, conferred by § 1229a(b)(5)(C)(ii), to seek rescission of a removal order entered *in absentia*, based on lack of notice, by filing a motion to reopen "at any time." *See Andia v. Ashcroft*, 359 F.3d 1181, 1184 (9th Cir. 2004) (per curiam).

Miller properly invoked § 1229a(b)(5)(C)(ii) as a basis for seeking rescission of her May 2004 removal order. She contends that she never received notice of the May 2004 removal hearing, and that the removal order entered against her *in absentia* is therefore invalid. If she prevails on that contention, § 1229a(b)(5)(C)(ii) authorizes the relief she requests. However, we do not reach any arguments concerning whether Miller in fact lacked notice of her removal hearing. Those arguments should be addressed by the agency in the first instance.

The BIA erred by holding that § 1231(a)(5) deprived the immigration court of jurisdiction to resolve Miller's motion to reopen. We grant Miller's petition for review and remand the case so that the agency can decide Miller's motion to reopen on the merits.

PETITION FOR REVIEW GRANTED; CASE REMANDED.

[4] An exception exists for cases involving a "gross miscarriage of justice." *Garcia de Rincon v. Department of Homeland Security*, 539 F.3d 1133, 1138 (9th Cir. 2008).

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 7, 2018 7:01 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Matter of A-C-M-, 27 I&N Dec. 303 (BIA 2018)

---------- Forwarded message ---------
From (b) (6)
Date: Wed, Jun 6, 2018 at 9:44 PM
Subject: Re: [immprof] RE: Matter of A-C-M-, 27 I&N Dec. 303 (BIA 2018)
To: (b) (6)
CC: (b) (6) Dan Kowalski <dkowalski@david-ware.com>, Immigration Law Professors List <immprof@lists.ucla.edu>

The decision seems to skip over important points, concentrating only on the definition of "material support."

To which Salvadoran guerrillas did the respondent provide material support? And how were they determined to be a terrorist organization? The decision says "we" determined [the guerrillas] were a terrorist organization in 1990, but it gives no citation to authority for that or summary of its reasoning, which it might have included in its earlier 2014 decision in the case. And "Salvadoran guerrillas" is a vague reference - why not specify the name of the organization?

As the dissent indicates, there was no discussion of whether the respondent knew or reasonably should have known that her actions afforded material support to a terrorist organization.

The decision does emphasize, in footnote 6, that the respondent may now seek an exemption from USCIS.

(b) (6)

On Thu, Jun 7, 2018 at 10:28 AM, (b) (6) > wrote:
All,

I'll send a more thoughtful post about the decision, but can't help myself from immediately observing the irony that Salvador's Truth Commission found that something like 85 + of the atrocities and mass human rights violations during the war were committed by the US-funded Salvadoran military and yet the guerrillas were the terrorists??? This is just an obscenity of the worst degree.

On Jun 6, 2018, at 2:30 PM, (b) (6) wrote:

Does anyone know the attorney? – needs an appeal to Circuit Appeal

From: Dan Kowalski [mailto:dkowalski@david-ware.com]
Sent: Wednesday, June 6, 2018 3:54 PM
To: Immigration Law Professors List <immprof@lists.ucla.edu>
Subject: [immprof] FW: Matter of A-C-M-, 27 I&N Dec. 303 (BIA 2018)

From: Brackett, Krystal (EOIR) (CTR) [mailto (b) (6)
Sent: Wednesday, June 06, 2018 2:27 PM
To (b) (6)
(b) (6) Dan Kowalski; immigapp@webpub.com
Subject: Matter of A-C-M-, 27 I&N Dec. 303 (BIA 2018)

The above precedent decision can be found in Volume 27 at page 303. The link to the decision is:

Internet:

https://www.justice.gov/eoir/page/file/1068811/download

(1) An alien provides "material support" to a terrorist organization if the act has a logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a de minimis degree.

(2) The respondent afforded material support to the guerillas in El Salvador in 1990 because the forced labor she provided in the form of cooking, cleaning, and washing their clothes aided them in continuing their mission of armed and violent opposition to the Salvadoran Government.

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Sunday, June 17, 2018 10:03 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Immigration Reading and other resources -- Compiled List

(b) (6)

---------- Forwarded message ---------
From (b) (6)
Date: Sat, Jun 16, 2018 at 9:32 PM
Subject: Re: [immprof] RE: Immigration Reading and other resources -- Compiled List
To: (b) (6)
Cc: ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, ImmProf <immprof@lists.ucla.edu>, (b) (6)
(b) (6)

A good podcast episode that is pretty new is Malcom Gladwell's revisi9nist history titled General Chapman's last stand it highlights quite a bit Doug Massey's work on Mexican migration and specifically why more enforcement leads to more undocumented

On Sat, Jun 16, 2018 at 8:17 PM (b) (6) wrote:

> Great list! My history students love *Asylum Denied* and *The Latehomecomer*. They have also enjoyed *Desert Exile: The Uprooting of a Japanese American Family* by Yoshiko Uchida, a memoir about Japanese American internment during WW2, and *Rachel Calof's Story: Jewish Homesteader on the Northern Plains*, a memoir of a Jewish immigrant woman in the early 20th century. Great reads, with important messages.
>
> Regards,
>
> (b) (6)
>
> **From** (b) (6)
>
> **Sent:** Friday, June 15, 2018 8:15 PM
> **To:** ICLINIC@LIST.MSU.EDU; ImmProf <immprof@lists.ucla.edu>
> **Subject:** [immprof] Immigration Reading and other resources -- Compiled List

Caution - External Email

Dear ImmProf and IClinic Colleagues –

A few weeks back, I sent out an email to the Immigration Clinic listserv asking for recommendations for immigration-related summer reading for students. As is no surprise to anyone on either list, the response to my request was quite generous and the list of suggested readings and other resource very rich. I have compiled the recommendations that I received, which included books, fiction and non-fiction, law-related and not. Folks also shared other resources, including films, podcasts, articles and practice materials that they thought might be helpful to our students in navigating immigration law in this difficult time. I have compiled all of those suggestions and combined them with materials from a list compiled last year by Jenny Moore and Gayla Ruffer. When that list was circulated, there was some talk about updating it from time to time, so consider this an attempted update.

The list is not in Blue Book format – far from it -- and the content has not been curated by me other than to try to provide enough information for you to find the resources if you are interested. Where recommenders had comments on books, I included those. I hope you find it useful. Thanks to everyone who contributed.

All the best for your summers and your summer reading. --(b) (6)

(b) (6)

(b) (6)

THE UNIVERSITY OF TULSA
College of Law

distribution or copying of this transmittal is strictly prohibited. If you suspect that you have received this communication in error, please notify us immediately by telephone at (b) (6) or e-mail at (b) (6) and immediately delete this message and all its attachments.

--
You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.

--
You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.
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You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 6:46 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Fwd: [ICLINIC] text of (b) (6) memo

(b) (6)

---------- Forwarded message ---------
From (b) (6)
Date: Wed, Jun 20, 2018 at 12:37 PM
Subject: [immprof] Fwd: [ICLINIC] text of (b) (6) memo
To (b) (6)

See this, below, esp paras 9-10

So for all those DV (& gang?) victims who didn't try to get police help because they knew it would have been a waste of time, and whose cases are pending, they'll be denied?

(b) (6)
Univ. of Mass.

Sent from my iPhone

Begin forwarded message:

> **From:** Dan Kowalski <dkowalski@DAVID-WARE.COM>
> **Date:** June 20, 2018 at 12:29:56 PM EDT
> **To:** (b) (6)
> **Subject: [ICLINIC] text of Lafferty memo**
> **Reply-To:** Dan Kowalski <dkowalski@DAVID-WARE.COM>
>
> As reported/reprinted in Vox, https://www.vox.com/policy-and-politics/2018/6/19/17476662/asylum-border-sessions

==========

From: Lafferty, John L

Sent: Wednesday, June 13, 2018 5:20 PM

To: [redacted by Vox]

Subject: Asylum Division Interim Guidance - Matter of A- B-, 27I&N Dec. 316 (A.G. 2018)

Asylum Division colleagues:

I'm sure that most of you have heard and/or read about the decision issued by Attorney General Sessions on Monday in Matter of A- B-, 27 I&N Dec. 316 (A.G. 2018).

Below is our Office of Chief Counsel's summary of the AG's decision, which is followed by Asylum's summaries of two 2014 decisions - Matter of M-E-V-G and Matter of W-G-R- - that were cited by the AG in support of his decision. While we continue to work with our OCC colleagues on final guidance for the field, we are issuing the following interim guidance on how to proceed with decision-making on asylum cases and CF/RF [credible fear/reasonable fear] screening determinations:

Matter of A-R-C-G- has been overruled and can no longer be cited to or relied upon as supporting your decision-making on an asylum case or in a CF/RF determination.

Effective upon issuance of this guidance, no affirmative grant of asylum or positive CF/RF screening determination should be signed off on by a supervisor as legally sufficient, or issued as a final decision/determination, that specifically cites to or relies upon Matter of A-R-C-G- as justification for the result. Instead, it should be returned to the author for reconsideration consistent with the next bullet.

All pending and future asylum decisions and CF/RF screening determinations finding that the individual has shown persecution or a well-founded fear of persecution on account of membership in a particular social group must require that the applicant meet the relevant standard by producing evidence that establishes ALL of the following:

A cognizable particular social group that is 1) composed of members who share a common immutable characteristic; 2) defined with particularity, and 3) socially distinct within the society in question;

Membership in that PSG;

That membership in the PSG was or is a central reason for the past and/or future persecution; and

The harm was and/or will be inflicted by the government or by non-governmental actors that the government is unable or unwilling to control.

When the harm is at the hands of a non-governmental actor, the applicant must show that the government condoned the behavior or demonstrated a complete helplessness to protect the victim. This new decision stresses that, in applying this standard, "[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime, any more than it would in the United States. There may be many reasons why a particular crime is not successfully investigated and prosecuted. Applicants must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." A-B- at 337-338. (See RAIO Lesson Plan - Definition of Persecution and Eligibility Based on Past Persecution, Section 4.2 "Entity the Government Is Unable or Unwilling to Control", for further guidance).

The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

Every asylum decision and CF/RF screening determination must consider and analyze whether internal relocation would be reasonable, as provided for at 8 CFR 208.

If you have questions on this interim guidance, please raise them up your local chain of command so that they can be brought to the attention of HQ Asylum QA Branch.

Thank you!!

OCC Summary

On June 11, 2018, the Attorney General (AG) issued a precedent decision in Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018), an asylum case based on domestic violence in which the AG addressed issues relating to whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable particular social group for purposes of asylum and statutory withholding of removal. In the decision, the AG overruled the Board of Immigration Appeals' (BIA) precedent decision in Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014), on which the BIA had relied in finding the respondent eligible for asylum. The AG found that, in analyzing the particular social group at issue in A-R-C-G-, "married women in Guatemala who are unable to leave their relationship," the BIA had failed to correctly apply the standards for cognizable particular social group set forth in Matter of M-E-V-G, 26 I&N Dec. 227 (BIA 2014), and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014), which require that a group be composed of members who share a common immutable characteristic, defined with particularity, and socially distinct within the society in question. In addition, the AG articulated that membership in the particular social group must be a central reason for the persecution, and asylum officers must consider whether internal relocation is reasonable in every case before granting asylum. In cases where the persecutor is a non-government actor, the applicant must show the government condoned the behavior or demonstrated a complete helplessness to protect the victim.

Under 8 CFR 1003.1(g), "decisions of the [BIA], and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security…" and "shall serve as precedents in all proceedings involving the same issue or issues." Accordingly, Matter of A-B- is effective immediately and binding on officers. Officers should not cite or rely upon Matter of A-R-C-G- in any adjudications going forward. Officers should continue to follow other binding precedent to the extent they are consistent with Matter of A-B-, including Matter of M-E-V-G and Matter of W-G-R-, both of which were cited favorably in the AG's decision. As a reminder, we have reproduced below the guidance issued in 2014 in reference to those decisions.

Further guidance will be forthcoming as we continue to review the decision in Matter of A-B- and consult with other components of DHS.

Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014)—available at
http://www.justice.gov/eoir/vll/intdec/vol26/3795.pdf

The respondent in M-E-V-G- was a citizen of Honduras who feared persecution at the hands of gangs in Honduras. He claimed membership in a PSG of Honduran youth who have been

actively recruited by gangs but who have refused to join because they oppose the gang. The Board decided M-E-V-G- on remand from the Third Circuit, following oral arguments before the Board in December 2012. See Validiviezo-Galdamez v. Attorney General of the U.S., 663 F.3d 582 (3d Cir. 2011).

In response to the Third Circuit's remand of Validiviezo-Galdamez, the Board in M-E-V-G- posited a three-part test to flesh out the definition of a PSG. An applicant for asylum or withholding of removal seeking relief based on "membership in a particular social group" must establish that the group is: (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. The Board noted that when Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), was decided, there were few PSG claims, but the experience of three decades indicated that Acosta has led to confusion and inconsistency. The Board noted that it added the social visibility and particularity requirements as a refinement in order to provide clarification. The Board reasoned that a refinement is necessary because in making the PSG ground like other protected grounds of race, religion, nationality, and political opinion, the protected grounds share not only an immutable characteristic, but also "an external perception component within a given society." M-E-V-G-, 26 I&N Dec. at 236.

Specifically, the Board in M-E-V-G- renamed the "social visibility" requirement as "social distinction," clarifying that social distinction does not require literal visibility or "outwardly observable characteristics." 26 I&N Dec. at 238. Rather, social distinction involves examining whether "those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it." Id. The Board also clarified that social distinction relates to society's, not the persecutor's, perception, though the persecutor's perceptions may be relevant to social distinction. The Board defined particularity as requiring that a group "be defined by characteristics that provide a clear benchmark for determining who falls within the group." Id. at 239. Membership in a PSG can be established through "[e]vidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like." Id. at 244.

The Board in M-E-V-G- noted that it had rejected the respondent's gang-related claim in the past based on its decisions in the companion cases of Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008), and Matter of E-A-G-, 24 I&N Dec. 591 (BIA 2008). The Board, however, acknowledged that S-E-G- and E-A-G- "should not be read as a blanket rejection of all scenarios involving gangs." M-E-V-G-, 26 I&N Dec. at 251. The Board remanded M-E-V-G- to the Immigration Judge for further proceedings consistent with the Board's clarifications.

Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014)—available at
http://www.justice.gov/eoir/vll/intdec/vol26/3794.pdf

The respondent in W-G-R- was a citizen of El Salvador who was a member of the Mara 18 gang for less than a year and who was attacked by members of his former gang after he left the gang. The respondent claimed that he feared persecution on account of his membership in a PSG consisting of "former members of the Mara 18 gang in El Salvador who have renounced their gang membership." An Immigration Judge found that the respondent did not establish that he was persecuted on account of his membership in a PSG.

On appeal, the Board found that the respondent did not establish that ""former members of the Mara 18 gang in El Salvador who have renounced their gang membership" constitute a PSG or that there is a nexus between the harm feared by the applicant and his status as a former gang member.

The Board in W-G-R- first determined that the respondent is not a member of a PSG. According to the Board, the group of "former members of the Mara 18 gang in El Salvador who have renounced their gang membership" does not constitute a PSG because it fails both the particularity and social distinction requirements. On particularity, the Board required further specificity, stating that "when a former association is the immutable characteristic that defines a proposed group, the group will often need to be further defined with respect to the duration or strength of the members' active participation in the activity and the recency of their active participation...." 26 I&N Dec. at 221-22. On social distinction, the Board found little evidence that Salvadoran society recognized the proposed PSG as a distinct group. While the Board referenced one report asserting a stigma against tattooed former gang members, the Board questioned whether the discrimination was instead due to the difficulty in distinguishing former gang members from individuals suspected to be active gang members.

In addition, the Board concluded that the respondent's claim lacked a nexus between the feared harm and his status as a former gang member. The Board attributed the gang's motives to their "desire to enforce their code of conduct and punish infidelity to the gang," rather than the respondent's status as a former gang member. W-G-R-, 26 I&N Dec. at 224. Accordingly, the respondent's appeal was dismissed.

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 6:47 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] From family separation to indefinite detention

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Wed, Jun 20, 2018 at 5:20 PM
Subject: Re: [immprof] From family separation to indefinite detention
To: (b) (6)
Cc: (b) (6)

(b) (6)

Here is the policy memo
https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf

On Wed, Jun 20, 2018 at 4:17 PM (b) (6) wrote:

I think you are referr8ng to the arriving alien designation? If so the issue there is clearly not a mandatory detention requirement that exists under 236(c), but the issue in Jennings was the unreviewability of detention decisions made by ERO. For arriving asylum seekers had during the credible fear process, that period of detention is arguably only for the credible fear process, though eve; that reading may nit withstand scrutiny. In any event there really is nothing prevent8ng release once a credible fear interview is done and in fact there was a 2007/2009 (i forget) policy memo specifically urging parole for POE arriving asylum seekers with certain exceptions.

On Wed, Jun 20, 2018 at 3:46 PM (b) (6) wrote:

If the USG argues that the *Jennings* statute requires detention of the adult alien pending prosecution and/or removal, is this statutory provision possibly the key? (apologies in advance if this is old hat to most of you; I'm trying to play catch-up very rapidly):

8 USC § 1182(d)(5)(A) provides: "The Attorney General may, except as provided in subparagraph (B) [favoring full admission as refugee] or in section 1184(f) of this title [about ship crew labor disputes], in his discretion parole into the United States temporarily under such conditions as he may prescribe **only on a case-by-case basis for urgent humanitarian reasons or significant public benefit** any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

One might well conclude that keeping families together is a "significant public benefit" (or even an "urgent humanitarian reason"). If so, is that something that can be determined writ large, i.e., for "all those with minor children," or must it be done "only on a case-by-case basis"?

On Wed, Jun 20, 2018 at 3:53 PM, (b) (6) wrote:

For those of us who are relatively new to *Flores* and this set of issues, what, exactly, are most of you urging as the alternative disposition in cases where the adult has not yet established a right to asylum (or hasn't raised an asylum claim) and is either being detained pending removal or is being detained for Trump's ramped-up criminal prosecutions? If the answer is some form of "release" of the entire family pending trial or removal, what's the basis for permitting such release under the statute at issue in *Jennings*?

I think I am beginning--thanks to many of you--to understand the answers to these questions, but just want to make sure whether there's a consensus view on them.

Thanks in advance.

On Wed, Jun 20, 2018 at 3:47 PM (b) (6) wrote:

Back to 2014

Sent from my iPhone

On Jun 20, 2018, at 2:44 PM (b) (6) wrote:

here it is

On Wed, Jun 20, 2018 at 3:30 PM (b) (6) wrote:

The Executive Order has been signed.

https://www.nytimes.com/2018/06/20/us/politics/trump-immigration-children-executive-order.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=span-ab-top-region&region=top-news&WT.nav=top-news

(b) (6)

(b) (6)

Tel: (b) (6) (work)

You can access my papers on the Social Science Research Network (SSRN) at
http://ssrn.com/author=339800

--
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--
(b) (6)
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
(b) (6)

--
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--
(b) (6)
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--

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To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 6:48 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: Fact Sheet on President Trump's Latest Executive Order on Family Detention
Attachments: image001.png

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Wed, Jun 20, 2018 at 10:11 PM
Subject: [immprof] FW: Fact Sheet on President Trump's Latest Executive Order on Family Detention
To: IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

Colleagues:

Our second fact sheet today, this time on the EO by the White House on Family Detention:
https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/FamilyDetentionEOFactsheetFinal.pdf

ICYM our earlier Fact Sheet on Family Separation:
https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Family%20Separation%20Policy%20Factsheet%20June%202018.pdf

We hope both are useful.

Best, (b) (6)

(b) (6)

(b) (6)

(b) (6)

The Pennsylvania State University | University Park

Phone: (b) (6) | Email: (b) (6)

329 Innovation Blvd., Suite 118 | University Park, PA 16802

Faculty Page: (b) (6)

Post Election Immigration Resources: https://pennstatelaw.psu.edu/immigration-after-election

Third Circuit Immigration Blog: http://3rdcirimmigrationblog.blogspot.com/p/about.html

(b) (6)

Twitter (b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 6:49 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: my "explainer" on the Trump separation doctrine

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Thu, Jun 21, 2018 at 3:25 AM
Subject: Re: [immprof] RE: my "explainer" on the Trump separation doctrine
To: (b) (6)
Cc: (b) (6)
(b) (6)

For what it's worth, I've written for years about amnesties for citizens, zero tolerance for others. I'm abroad at the moment, with limited Web access; here are a few examples I could retrieve on my phone.

Also for what it's worth ... I completed the 8th annual Ride for Human Rights, the bulk of it a shorter (635 mile) segment from Indiana to Louisiana after I suspended my San Jose to Seattle trip due to a PE & pneumonia. It's only anecdotal, but as every year, I am encouraged by the kindness & fairmindedness of the Americans I meet. When I reminded people in rural Alabama & Mississippi etc. that an accused shoplifter can get a free lawyer, but not (say) a Russian Orthodox convert to the Baptist denomination who faced persecution in her native Omsk (this & other examples of my Christian-convert clients resonated with them) - when I pointed out that applying for asylum is a right, that asylum applicants aren't gate-crashers, & that the I-589 is 26 pages of forms & instructions in English - they got it, they told me it's not fair. I speak gently, I listen, we connect, I never feel the hate that comes across in the media. Go to rideforhumanrights.com & scroll back to meet some of these good people; maybe you too will feel a little better about America.

=====

https://rideforhumanrights.wordpress.com/2011/04/17/immigration-snapshot-amnesty/

Excerpt:

Georgia, home of the Stone Mountain monument honoring Confederate traitors, has photos of highway toll evaders' license plates. Georgia police know where these scofflaws live. Nevertheless, Georgia's 2010 toll amnesty reduced the per-violation fee from $25 to $15 for those who paid up.

In 2008-09, New York State had a tax amnesty. Crooks could "save thousands in tax penalties and gain protection from criminal tax prosecution if they agree to pay back tax debt and become compliant in future

years." Cheats and thieves who paid up and agreed to behave were in the clear. Florida and Philadelphia had similar tax amnesties last year. Libraries throughout the country offer amnesties to encourage return of overdue books.

There's another kind of amnesty: the "statute of limitations." In New York, if you commit arson, armed robbery, burglary, or other serious crimes, and you are not indicted within five years, you are home free. Forever.

Foreigners aren't so lucky. . . .

Some of our law-'n'-order types admire and forgive bloody-handed Confederates and take advantage of tax and toll amnesties without a second thought.

Yet they insist we banish a foreigner in her fifties who has lived here since she was a baby. They are satisfied if a legal resident who served in the Marines is deported forever when he applies for citizenship or returns from a vacation abroad and his teenage drug offense comes to light. They grow frantic at the thought of hardworking residents paying fines and back taxes to get right with the law.

"No amnesty!" they cry. "Illegal is illegal!" But only when it comes to foreigners. Not for native-born traitors who took up arms against our nation. We name military bases for them.

We should remember the words of our President: **"And I remind people all across our country, family values do not stop at the Rio Bravo. There are people in Mexico who have got children who are worried about where they are going to get their next meal from. And they are going to come to the United States, if they think they can make money here. That's a simple fact. And they're willing to walk across miles of desert to do work that some Americans won't do. And we've got to respect that, it seems like to me, and treat those people with respect."**
It was not Bill Clinton or Barack Obama who spoke these words. **It was George W. Bush**. He realized that a country that forgives treason, espionage and tax evasion should have the common sense and decency to give peaceful busboys and farmworkers a break too.

======

https://rideforhumanrights.wordpress.com/2018/04/04/up-from-the-depths/

In 2016, Alabama conducted a "Tax Delinquency Amnesty Program" for tax-*stealing* citizens. Yet Alabama officials show no mercy to tax-*paying immigrants* who happen to be in Alabama without federal permission.

======

https://rideforhumanrights.wordpress.com/2018/05/09/forgiven-as-long-as-you-have-papers/

In 2011, Alabama enacted HB 56, a law intended to drive unauthorized immigrants out of the state. It is unforgiving, presaging current federal enforcement policy.

But Alabama's government *is* forgiving to tax cheats [citing the Alabama Tax Delinquency Amnesty Act of 2016].

======

From my May 13, 2010, column in The Westchester Guardian newspaper (I had a weekly column for a few months until the editor was fired & I had to leave with him):

. . . Overstaying a visa is not a crime. It is a civil violation akin to a parking ticket. A foreigner's mere presence does not cause us harm any more than the presence of an armadillo or a wren. But, as anti-immigrant politicians insist, the law is the law.

Or is it? Under Arizona Revised Statues 36-622, hoteliers are required to report in writing to the local Board of Health "each case of contagious … disease in his establishment" and name of the infected guest. Colds are contagious. Stay at a Scottsdale inn and the manager is legally bound to report whether your sniffle is hay fever or a cold. I bet he won't. Shame on him. After all, the law is the law, they say. . . .

The genius of America is to unleash the genius of humanity and make things better for us all. We do this by making people free, not by setting up a police state.

Then we can visit Phoenix without being carded, just like we visit today without sticking out our tongues for the desk clerk at the Holiday Inn.

=====

(b) (6)

us tiny keypad = many typos

On Jun 21, 2018, at 1:25 AM, (b) (6) wrote:

> Ripping up a dollar bill is a good one. 18 USC 333. I also think using any state law crime is useful, e.g. what if local authorities announced a zero tolerance policy on jaywalking, or failing to wear a seatbelt, or speeding over x amount, and suddenly started arresting everyone for those offenses, and if the arrestees have kids with them, kids go into separate custody.
>
> On Wed, Jun 20, 2018 at 9:46 AM (b) (6) wrote:
>
> Thanks a lot (b) (6) This is really helpful. I had not realized that they were not being transferred to BOP custody during the hearings. Even if transferring them to BOP were happening or being threatened, I think we should still not assume that separation would be inevitable or required: There should be a determination as to whether pre-trial detention is warranted and that determination should take into account their responsibility for minor children. (Likewise in sentencing.) This makes Nielson's claim of treating immigrants the same as citizens all the more false.
>
> I keep thinking of the analogies we might make to other federal misdemeanors that are rarely prosecuted. The interstate transport of water hyacinths comes to mind (18 USC 46), as it has harmful consequences to waterways that are much clearer and easily shown than the consequences of improper entry. As with improper entry, transporting water hyacinths across state lines carries a 6 month sentence and yet I don't see this administration pushing for a zero-tolerance policy, detention, and family separations for all of the illegal hyacinth transporters out there. Another one could be transporting liquor into a state in which its sale is prohibited (18 USC 1262). That presumably occurs much more often than it is actually prosecuted. My point is simply that if people actually believe the administration when it says it is merely enforcing the law as it is required to do, they need to consider all of the misdemeanors that are rarely

prosecuted and for which they would never even consider supporting family separation and mass detention (in addition to the more important point that Lauren makes about the fundamental rights the administration is ignoring).

Has someone already worked through better examples than these? I have the sense that there must be an article making this point already but I can't think of it.

On Wed, Jun 20, 2018 at 4:12 PM (b) (6) (b) (6) wrote:

Thank you SO much, (b) (6) for parsing this out carefully. This is very helpful and perfectly lucid. Really appreciate it.

All the best,

(b) (6)

(b) (6)

On Wed, Jun 20, 2018 at 10:08 AM, (b) (6) wrote:

From down here in Texas, I have MANY thoughts on these various strands and will try to write more later if I can find a moment in the chaos to breathe. I agree with the concerns expressed regarding the normalization of immigration detention, including family detention. Even allies are so distraught about family separation that it is tempting to show another way of handling the situation that suggests family detention, intrusive monitoring and so forth.

We should be careful to avoid that temptation and insist instead that the administration must comply with all of the laws, not just the misdemeanor unlawful entry criminal law. Following all applicable laws means that the administration must abide by: 1) the constitutional standard that treats family unity as a fundamental right; 2) INA 208 that allows for individuals to seek asylum without regard to manner of entry; and 3) the Flores settlement, which insists on maintaining family unity AND requires that children be released from detention as promptly as possible and generally after no more than 5 days (or 3 days if no emergency) or 20 days in the family detention context. Read together, the legal obligations require the administration to process families at the border and release them to attend their hearings so that the child will be released with and to the parent as required by Flores.

There are serious questions about the legality of the criminal prosecutions. But even if they are legal, they do not change this analysis. After the criminal prosecution, families should be immediately reunited and released in this manner. The criminal prosecution in no way justifies the separation of parents and children in two separate immigration detention

facilities, which is what is taking place because of the administration's goal of long-term separation.

As just a clarifying matter, I have noticed -in the great piece below by Allan and several other pieces- a concession that separation must occur if there is a criminal prosecution. This concession assumes that the parents are being sent to federal prison as they await a decision on the criminal charge and then spend time in federal prison after a conviction. It is correct that some separation would have to occur if parents were sent into BOP or Marshals custody, although even then it could be temporary rather than permanent. In practice on the ground, at least in south Texas, the parents are not ever sent to a BOP or marshals facility. Instead, they remain at the CBP facility for several days while the criminal prosecution takes place, where their children can and are also held. They are then called into federal court to plead on the criminal misdemeanor charge, are given a sentence of time served (essentially the time they spent in CBP custody) and then are returned to CBP. Their kids are taken away by ORR during the time that they are in CBP awaiting the court hearing or while they are at the hearing. Then, when the parent gets back from the federal court hearing, the parent is sent off to immigration detention.

So, in fact, it is absolutely not necessary to separate the family to complete the criminal process. Of course, to repeat, there are many other good reasons why criminal charges should not be brought and those charges may themselves be unlawful. But it is also not the case that family separation is an unavoidable consequence of criminal prosecution. Family separation is not a byproduct of criminal prosecution; the criminal prosecution is being used to engineer family separation and justify it when it is not justifiable.

It is also interesting to see how the administration insists that the criminal law must be fully enforced without regard to consequences but then simultaneously claims that other laws must be changed to suit the administration's goals (including Flores, although the administration deceivingly claims that Flores mandates separation when instead it mandates family unity and release, which is the real trouble that the administration has with the agreement and its interpretation). The law is the law when it suits the administration, but the law is bad and must be changed when it does not suit the administration.

I'll try to make these thoughts more articulate later but wanted to share some impressions from Texas… I'll be interested to hear thoughts.

(b) (6)

(b) (6)

(b) (6)
[redacted]
(b) (6)
[redacted]
512-232-0800 (fax)

From: (b) (6) [redacted]
Sent: Tuesday, June 19, 2018 3:04 PM
To: Immigration Law Professors List <immprof@lists.ucla.edu>
Subject: [immprof] my "explainer" on the Trump separation doctrine

Comments appreciated.

http://www.nydailynews.com/news/ny-news-wernick-explains-trump-immigration-policy-20180619-story.html

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 6:49 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Flores's application to the Trump E.O.

(b) (6)

---------- Forwarded message ---------
From (b) (6)
Date: Thu, Jun 21, 2018 at 6:26 AM
Subject: [immprof] RE: Flores's application to the Trump E.O.
To (b) (6)
(b) (6)
Cc: (b) (6)
(b) (6)

(b) (6) and others familiar with *Flores*: I'm still somewhat confused about whether Trump's E.O. requires any amendment to the *Flores* injunction.

Assuming arguendo that the government is correct that it may continue to detain the parents in ICE detention and/or DOJ detention (during the criminal proceedings), does the *Flores* agreement require the transfer of their minors to ORR custody after 20 days *even if the parents and their minors would prefer that the minors remain with their parents in ICE detention*? And, if not, is there anything else about the *Flores* agreement, or any other legal limitation, that would preclude the sort of longterm family detention that Trump's E.O. appears to contemplate? Thanks again.

On Wed, Jun 20, 2018 at 10:08 AM (b) (6) wrote:

> From down here in Texas, I have MANY thoughts on these various strands and will try to write more later if I can find a moment in the chaos to breathe. I agree with the concerns expressed regarding the normalization of immigration detention, including family detention. Even allies are so distraught about family separation that it is tempting to show another way of handling the situation that suggests family detention, intrusive monitoring and so forth.
>
> We should be careful to avoid that temptation and insist instead that the administration must comply with all of the laws, not just the misdemeanor unlawful entry criminal law. Following all applicable laws means that the administration must abide by: 1) the constitutional standard that treats family unity as a fundamental right; 2) INA 208 that allows for individuals to seek asylum without regard to manner of entry; and 3) the Flores settlement, which insists on maintaining family unity AND requires that children be released from detention as promptly as possible and generally after no more than 5 days (or 3 days if no emergency) or 20 days in the

family detention context. Read together, the legal obligations require the administration to process families at the border and release them to attend their hearings so that the child will be released with and to the parent as required by Flores.

There are serious questions about the legality of the criminal prosecutions. But even if they are legal, they do not change this analysis. After the criminal prosecution, families should be immediately reunited and released in this manner. The criminal prosecution in no way justifies the separation of parents and children in two separate immigration detention facilities, which is what is taking place because of the administration's goal of long-term separation.

As just a clarifying matter, I have noticed -in the great piece below by Allan and several other pieces- a concession that separation must occur if there is a criminal prosecution. This concession assumes that the parents are being sent to federal prison as they await a decision on the criminal charge and then spend time in federal prison after a conviction. It is correct that some separation would have to occur if parents were sent into BOP or Marshals custody, although even then it could be temporary rather than permanent. In practice on the ground, at least in south Texas, the parents are not ever sent to a BOP or marshals facility. Instead, they remain at the CBP facility for several days while the criminal prosecution takes place, where their children can and are also held. They are then called into federal court to plead on the criminal misdemeanor charge, are given a sentence of time served (essentially the time they spent in CBP custody) and then are returned to CBP. Their kids are taken away by ORR during the time that they are in CBP awaiting the court hearing or while they are at the hearing. Then, when the parent gets back from the federal court hearing, the parent is sent off to immigration detention.

So, in fact, it is absolutely not necessary to separate the family to complete the criminal process. Of course, to repeat, there are many other good reasons why criminal charges should not be brought and those charges may themselves be unlawful. But it is also not the case that family separation is an unavoidable consequence of criminal prosecution. Family separation is not a byproduct of criminal prosecution; the criminal prosecution is being used to engineer family separation and justify it when it is not justifiable.

It is also interesting to see how the administration insists that the criminal law must be fully enforced without regard to consequences but then simultaneously claims that other laws must be changed to suit the administration's goals (including Flores, although the administration deceivingly claims that Flores mandates separation when instead it mandates family unity and release, which is the real trouble that the administration has with the agreement and its interpretation). The law is the law when it suits the administration, but the law is bad and must be changed when it does not suit the administration.

I'll try to make these thoughts more articulate later but wanted to share some impressions from Texas… I'll be interested to hear thoughts.

(b) (6)
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512-232-0800 (fax)

From: (b) (6)
Sent: Tuesday, June 19, 2018 3:04 PM
To: Immigration Law Professors List <immprof@lists.ucla.edu>
Subject: [immprof] my "explainer" on the Trump separation doctrine

Comments appreciated.

http://www.nydailynews.com/news/ny-news-wernick-explains-trump-immigration-policy-20180619-story.html

--
(b) (6)
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
(b) (6)

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 21, 2018 1:56 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Pereira v. Sessions is out

---------- Forwarded message ---------
From: (b) (6)
Date: Thu, Jun 21, 2018 at 11:19 AM
Subject: Re: [immprof] RE: Pereira v. Sessions is out
To: (b) (6)
(b) (6)
CC: ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

The majority opinion is great, but not to be missed is Kennedy's concurrence suggesting a needed corrective against federal courts "cursory" and "reflexive" application of Chevron deference:

"it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie Chevron and how courts have implemented that decision."

https://www.supremecourt.gov/opinions/17pdf/17-459_1o13.pdf

(b) (6)

From: (b) (6)
Sent: Thursday, June 21, 2018 10:21:16 AM
To: (b) (6)

Cc: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu)
Subject: RE: [immprof] RE: Pereira v. Sessions is out

Really and truly. This is going to help quite a few people.

From: (b) (6)
Sent: Thursday, June 21, 2018 10:18 AM
To: (b) (6)
Cc: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>
Subject: Re: [immprof] RE: Pereira v. Sessions is out

That is awesome!

(b) (6)

On Thu, Jun 21, 2018 at 9:15 AM, (b) (6) wrote:

The court holds that a notice to appear that does not designate the specific time or place of the non-citizen's removal proceedings is not a "notice to appear" for purposes of the statute and therefore does not stop the clock on the "continuous physical presence."

(b) (6)

(b) (6)

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Our lives begin to end the day we become silent about things that matter - Martin Luther King, Jr.

PennState Law

From: (b) (6)
Sent: Thursday, June 21, 2018 10:14 AM
To: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>; nationalimmigrationproject@yahoogroups.com
Subject: [immprof] Pereira v. Sessions is out

Here's the opinion in Pereira v. Sessions.

https://www.supremecourt.gov/opinions/17pdf/17-459_1o13.pdf

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(b) (6)

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, June 22, 2018 9:48 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Pereira v. Sessions is out

---------- Forwarded message ---------
From: (b) (6)
Date: Thu, Jun 21, 2018 at 7:43 PM
Subject: RE: [immprof] RE: Pereira v. Sessions is out
To (b) (6)
(b) (6)
CC: ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

THE BEST part of the decision is what it does not due. It does not say WHEN the clock stops on the 10 years. Does a Notice of Hearing stop it (arguably no), so ICE may have to issue a new NTA with a hearing date to get the clock stopped. We will be filing a LOT of Motions to Reopen over the next few months, even for deported folks!

(b) (6)

KUCK | BAXTER
IMMIGRATION

365 Northridge Road

Suite 300

Atlanta, GA 30350

www.immigration.net

Phone: (b) (6) Direct Dial: (b) (6) Fax: (404) 816-8615

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From: (b) (6)
Sent: Thursday, June 21, 2018 10:21 AM

To (b) (6)
Cc: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu)

Subject: RE: [immprof] RE: Pereira v. Sessions is out

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Sent: Thursday, June 21, 2018 10:18 AM
To: (b) (6)
Cc: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>
Subject: Re: [immprof] RE: Pereira v. Sessions is out

That is awesome!

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(b) (6)

(b) (6)

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PennState Law

From: (b) (6)
Sent: Thursday, June 21, 2018 10:14 AM
To: ICLINIC@LIST.MSU.EDU; IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>; nationalimmigrationproject@yahoogroups.com
Subject: [immprof] Pereira v. Sessions is out

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(b) (6)

(b) (6)

[redacted]

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[redacted]

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, June 22, 2018 11:53 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Fwd: Call for Papers to Honor Juan Osuna; CMS event Nov. 15 in DC
Attachments: Osuna Call for Proposals FINAL.pdf

---------- Forwarded message ---------
From: (b) (6)
Date: Fri, Jun 22, 2018 at 5:23 PM
Subject: [immprof] Fwd: Call for Papers to Honor Juan Osuna; CMS event Nov. 15 in DC
To: immprofslist Professors List <immprof@lists.ucla.edu>, ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, AILA Law Professors Interest Group-LPIG digest <lpig@lists.aila.org>

FYI: See below and attached. I hope many of you will consider writing a paper for this event and/or attending. (b) (6)

Begin forwarded message:

From (b) (6)
Subject: Event and Collection of Papers to Honor Juan Osuna
Date: June 22, 2018 at 5:12:31 PM EDT
To: (b) (6)

Dear Colleagues,

The Center for Migration Studies of New York (CMS) has begun to organize a day-long gathering in Washington, DC, to honor the memory of our friend and esteemed colleague Juan Osuna. The event will take place on November 15th at the law firm of Fried Frank, which is located at 801 17th St NW, Washington, DC 20006. If you're receiving this note, we're hoping you will be able to attend the event, which will be devoted to the values and issues that Juan cared about.

We will be developing an event agenda in the upcoming weeks, but for now we wanted to share – via this letter – a "call for papers" on access to justice, due process, and fundamental fairness in light of the current administration's attacks on these values and on particular migrant and refugee populations. The papers could cover any of the following: (1) the needs and challenges faced by targeted populations; (2) critiques of the measures or strategies adopted by the administration; (3) the programs now under attack; (4) efforts to defend these populations and programs. As part of this collection, we hope to generate policy analysis and evidence-based ideas that chart a different course for our nation. CMS intends to compile this series of articles, essays, and blogs into an on-line collection that honors Juan and his legacy. Of course, we'd also like as many of the authors of these pieces as possible to attend the November 15th event.

We're trying to be flexible in terms of submissions. Our *Journal on Migration and Human Security* (*JMHS*) is a peer-reviewed policy journal with detailed submission, style, and citation guidelines: http://jmhs.cmsny.org/index.php/jmhs/about/submissions. *CMS Essays* are less formal and generally shorter pieces than *JMHS* articles. Our essays are not peer-reviewed, but we do carefully edit them. To see past essays, please go to: http://cmsny.org/cms-essays/. CMS also posts shorter blogs. We would welcome submissions for this collection in any of these forms. If you would like to submit a paper, please send a paragraph to (b) (6) that describes the topic and likely format by no later than July 9th and we will let you know if we think it's a good fit for the collection. Drafts of all papers will be due by October 26th. We would plan to post or publish papers on a rolling basis, and include them in the final collection by the end of this year.

We would also like to ask your help to identify potential authors – ideally from a range of disciplines – that might be interested in contributing to this collection. To that end, please find attached a brief "call for papers" that you might share with potential authors.

We hope you will be able to contribute to the collection and to attend our November 15th event.

Best wishes,

(b) (6)

(b) (6)
Miller Mayer, LLP
215 East State Street, Suite 200
P.O. Box 6435
Ithaca, New York 14851-6435
(b) (6)
Phone: (b) (6)
Fax: 607-272-6694
e-mail: (b) (6)
WWW: http://www.millermayer.com/

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(b) (6)

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CALL FOR PAPER PROPOSALS

The Center for Migration Studies in New York (CMS) is publishing a special online collection of original articles, essays, and blogs in tribute to the late Juan Osuna, former director of the Executive Office for Immigration Review (EOIR) at the US Department of Justice. The collection will be devoted to the values and issues that Juan cared about, which are now under unprecedented assault.

CMS seeks paper proposals on access to justice, due process, and fundamental fairness, covering any of the following:

- Particular migrant and refugee populations and programs that have been under attack by the current administration;
- Measures or strategies adopted by the administration that undermine access to justice, due process, and fundamental fairness;
- Community-based efforts and strategies to defend particular populations, as well as institutions and programs that promote access to justice and due process.

CMS welcomes policy analysis and evidence-based ideas and proposals that chart a different course for the United States.

The special collection will be the subject of a conference organized by CMS on November 15, 2018 at the Washington DC law offices of Fried, Frank, Harris, Shriver & Jacobson LLP.

CMS Publication Formats

CMS reserves the right to publish submitted article, essays, or blogs in whatever format is most fitting for them. The possibilities include: (1) the *Journal on Migration and Human Security*, a peer-reviewed, public policy journal, with strict submission guidelines: http://cmsny.org/jmhs/submission-guidelines/; *(2) CMS Essays,* which are less formal, carefully edited (but not peer-reviewed), and generally shorter pieces than *JMHS* articles: http://cmsny.org/cms-essays/ ; (3) CMS blogs, which offer an overview of an issue and brief analysis.

How to Submit Your Proposal

To be considered for this special collection, send a paragraph describing your topic and publication format (i.e., original article, essay, or blog) to Donald Kerwin, CMS's Executive Director, by emailing dkerwin@cmsny.org. Proposals are due no later than July 9, 2018.

Drafts of all papers will be due by October 26, 2018. CMS will post or publish papers on a rolling basis, and include them in the final collection by the end of 2018.

Contact:

Please direct questions and ideas on papers to dkerwin@cmsny.org.

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Saturday, June 23, 2018 11:01 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Detaining Families: A Study of Asylum Adjudication in Family Detention

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Sat, Jun 23, 2018 at 10:06 AM
Subject: RE: [immprof] Detaining Families: A Study of Asylum Adjudication in Family Detention
To: Immigration Law Professors List <immprof@lists.ucla.edu>

Dear all,

Thanks for sharing all of the wonderful and timely work this week. I'm writing to pass along our article on family detention, which was just published today and is relevant to the current debate:

http://www.californialawreview.org/4-detaining-families/

Best,

(b) (6)

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Tuesday, June 26, 2018 2:23 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] consular nonreviewability

---------- Forwarded message ---------
From: (b) (6)
Date: Tue, Jun 26, 2018 at 1:52 PM
Subject: [immprof] consular nonreviewability
To: immprof@lists.ucla.edu <immprof@lists.ucla.edu>

Decision was mostly abdication, especially Kennedy's concurrence (does anyone seriously think it will help to remind the POTUS of his oath?). But it's interesting that Roberts made a point of preserving (maybe even expanding) judicial review.

1. He separated the consular nonreviewability analysis into statutory and constitutional grounds.

2. As to statutory claims, he assumed based on Sale that the court has jurisdiction to look at legal issues, and then he looked. (Hard to see how this is consistent with e.g. Cardenas.) Particularly helpful that he asked whether there is explicit jurisdiction-stripping in the statute (ans: no!).

3. As to constitutional claims, he treated facially legitimate and bona fide as the baseline, but in this case considered under rational basis. I know, I know only a madman or someone facing the FLABR standard would like to be under rational basis. But actually it's kind of a step forward for us. We're still in the back of the bus, but we've moved up a row or two.

4. He found that affected USCs have standing to bring claims.

On the merits it was awful, deferring to pseudo-national security reasons, basically creating some Frankenstein Korematsu 2.0 even as he performed last rites on Korematsu 1.0. So what's he up to with preserving / expanding judicial review? I don't know. I have three theories:

a. Maybe it's part of a larger court project aimed a reining in agencies. See, e.g., Kennedy's concurrence in Pereira, Gorsuch in Dimaya…

b. Maybe he's a judicial maximizer (is that the same thing?)

c. Maybe he's preserving some wiggle room in case the POTUS goes even more demonstrably off the rails

Personally, I tend to go for #3. He might feel given current court composition that he can uphold rule of law for the next 2 years (or next 6 if... ugh) if he is strategic.

Regards,

(b) (6)

From (b) (6)
Sent: Tuesday, June 26, 2018 12:30 PM
To: immprof@lists.ucla.edu
Subject: [immprof] hawaii decision/korematsu

You gotta appreciate the cynicism or dialectics of upholding the travel ban (using a case from Hawaii, no less) to overturn *Korematsu*.

Roberts very predictably stays within the 'four corners' of the proclamation to find *Fiallo* and *Mandel* enough –what many of us expected from the start. But the struggle was noble and inspired dissents that will be there in future better days, if and when they arrive.

(b) (6)

University of Miami School of Law

1311 Miller Dr.

Coral Gables, FL 33146

tel: (b) (6)

fax: 305-284-1588

(b) (6)

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, June 28, 2018 4:47 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: 2018 Annual Report

---------- Forwarded message ----------
From: (b) (6)
Date: Thursday, June 28, 2018
Subject: [immprof] FW: 2018 Annual Report
To: "Immprof (immprof@lists.ucla.edu)" <immprof@lists.ucla.edu>

Just FYI, Ombuds report issued.

(b) (6)

(b) (6)

New York Law School

185 West Broadway, C 240

New York, NY 10013

(b) (6)

(b) (6)

Safe Passage Project Corporation

www.safepassageproject.org

From: U.S. Department of Homeland Security [mailto:departmentofhomelandsecurity@service.govdelivery.com]
Sent: Thursday, June 28, 2018 3:08 PM

To: (b) (6)
Subject: 2018 Annual Report

Having trouble viewing this email? View it as a Web page.

Citizenship and Immigration Services Ombudsman **June 28, 2018**

Office of the CIS Ombudsman

2018 Annual Report

The Office of the Citizenship and Immigration Services Ombudsman (Ombudsman) is pleased to issue our 2018 Annual Report.

The Ombudsman has the statutory mission to assist individuals and employers with problems with U.S. Citizenship and Immigration Services (USCIS) and make recommendations to improve the delivery of immigration services. The Ombudsman is an independent Department of Homeland Security component.

2018 Annual Report Highlights

- **USCIS Anti-Fraud Initiatives**: Over the past 6 years, the Fraud Detection and National Security (FDNS) Directorate's authorized staffing levels more than doubled from 756 positions in FY 2012 to 1,548 positions in FY 2018. In 2017, as part of FDNS's move toward a "risk-based" anti-fraud model, it expanded site visits to more employers and incorporated more electronic solutions. FDNS is improving is metrics for measuring case processing, but would benefit from the electronic case processing system envisioned by USCIS' transformation project.
- **Transformation:** In 2017, USCIS revised its overarching electronic case management and benefits processing goals. USCIS now prioritizes the development of core capabilities, which cut across all form types. While

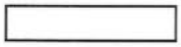
USCIS continues with these efforts, it should be noted stakeholder reported improvements in electronic immigration system (ELIS) functionality but continue to voice concerns over a range of ELIS issues.

- **Background Checks**: Background checks are essential for maintaining the integrity of our immigration system. Over the past several years, USCIS' workload has increased substantially, both in volume and complexity, providing additional challenges for improving both integrity and efficiency. USCIS could improve public confidence in its efforts by providing the public more information on its process to review long-pending cases.
- **Affirmative Asylum Backlog:** As of March 31, 2018, USCIS had well over 300,000 affirmative asylum applications pending a final decision from the Asylum Division. While the backlog can be traced to the growing number of individuals filing asylum claims, the cause of the backlog stems from several converging factors. USCIS has taken a series of steps to reduce its pending caseload, but despite hiring new staff, changing processes, and opening additional offices, reducing the backlog will take time and present an ongoing challenge.
- **EB-5 Immigrant Investor Program:** While the EB-5 Program remains attractive to foreign investors, many stakeholders, including members of Congress, have increasingly voiced concerns regarding fraud and abuse, which undermine the original purpose of the program and detract from potential benefits offered by it. USCIS has sought to address these concerns through a range of reforms. It remains to be seen how these reforms will improve the integrity of the EB-5 Program and whether they will be sufficient to reassure those who seek increased oversight.

You can find the Ombudsman's 2018 Annual Report here.

The Ombudsman hosts opportunities to share information about relevant topics and provide an opportunity to hear feedback from the community about issues related to the delivery of immigration benefits and services.

Stay Connected:
Follow CIS Ombudsman on Facebook



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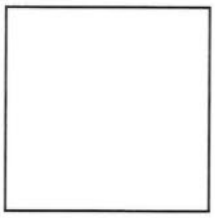

U.S. Department of Homeland Security · www.dhs.gov · 202-282-8000

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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, June 29, 2018 5:13 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: EOIR data release

Follow Up Flag: Follow up
Flag Status: Completed

---------- Forwarded message ----------
From (b) (6)
Date: Friday, June 29, 2018
Subject: EOIR data release
To (b) (6)
Cc

Dear Mark:

I was delighted to see that EOIR recently released the raw data for immigration proceedings on its website which I understand had previously been released to TRAC pursuant to FOIA requests. Does EOIR also have a codebook for these data?

Working with co-author (b) (6) from the Woodrow Wilson school at Princeton, I have been appointed a TRAC fellow to conduct an empirical study on removal proceedings over the past twenty years. While the TRAC data is terrific, our preference is to rely on publicly available data from the government itself if possible.

I don't know if you remember me – we met briefly at one of migration reading group meetings at Brooklyn Law School a couple years back.

I hope this note finds you well.

Kind regards,

(b) (6)

p.s. Please send me your work address if you would prefer to correspond that way. Also, is there a phone number we can reach you if we have additional questions?

--

(b) (6) [redacted]

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, July 2, 2018 5:41 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Administrative Law's Ordinary Remand Rule: In re Negusie Edition
Attachments: image002.png

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Mon, Jul 2, 2018 at 4:59 PM
Subject: [immprof] Administrative Law's Ordinary Remand Rule: In re Negusie Edition
To: IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

Dear Colleagues:

(b) (6) comments on last week's Negusie ruling is worth a read and shares a good perspective through a lens of administration law and a former clerk of Justice Kennedy: http://yalejreg.com/nc/administrative-laws-ordinary-remand-rule-in-re-negusie-edition/

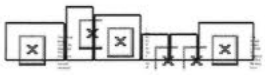
Best,(b) (6)

(b) (6)

(b) (6)

The Pennsylvania State University | University Park

GIVE ONLINE NOW (identify Center for Immigrants' Rights in the comments section)



Phone(b) (6) | Email:(b) (6)

(b) (6)

Twitter:(b) (6)

Our lives begin to end the day we become silent about things that matter - Martin Luther King, Jr.

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Tuesday, July 3, 2018 6:45 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] my contribution to the ongoing op-ed discussion

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Tue, Jul 3, 2018 at 2:21 AM
Subject: Re: [immprof] my contribution to the ongoing op-ed discussion
To: Immigration Law Professors List <immprof@lists.ucla.edu>

"How to fix the crisis caused by Central American asylum seekers — humanely" - published Monday by Vox

https://www.vox.com/the-big-idea/2018/7/2/17524908/asylum-family-central-america-border-crisis-trump-family-detention-humane-reform

-(b) (6)

(b) (6)

On Jul 2, 2018, at 9:15 AM, Dan Kowalski <dkowalski@david-ware.com> wrote:

> https://www.lexisnexis.com/legalnewsroom/immigration/b/immigration-law-blog/archive/2018/07/02/ca4-on-conviction-guzman-gonzalez-v-sessions.aspx
>
> ## CA4 on Conviction: Guzman Gonzalez v. Sessions
>
> ***Guzman Gonzalez v. Sessions*** - "The question presented for our review is purely legal: does the imposition of $100 in court costs, assessed attendant to a prayer for judgment continued under North Carolina law, qualify as a "conviction" within the meaning of the Immigration and Naturalization Act (the "Act")? 8 U.S.C. § 1101 et seq.; id. § 1101(a)(48)(A). The Board of Immigration Appeals (the "Board") held that it does. We disagree. Accordingly, we grant

Guzman's petition for review, reverse the Board's Order, and remand Guzman's case for further proceedings consistent with this opinion."

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Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, July 6, 2018 8:51 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: 2 new USCIS Policy Memos

Follow Up Flag: Follow up
Flag Status: Completed

---------- Forwarded message ---------
From: (b) (6)
Date: Fri, Jul 6, 2018 at 6:53 AM
Subject: [immprof] RE: 2 new USCIS Policy Memos
To: Dan Kowalski <dkowalski@david-ware.com>, ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, Immigration Law Professors List <immprof@lists.ucla.edu>

Colleagues: Here is a somewhat dry post summarizing the NTA memos. Comments and criticisms welcome.
(b) (6)

(b) (6)

(b) (6)

The Pennsylvania State University | University Park

Phone (b) (6) | Email: (b) (6)

(b) (6)

(b) (6)

[redacted]

Twitter: (b) (6)

Our lives begin to end the day we become silent about things that matter - Martin Luther King, Jr.

PennState Law

From: Dan Kowalski <dkowalski@DAVID-WARE.COM>
Sent: Thursday, July 5, 2018 6:09 PM
To: ICLINIC@LIST.MSU.EDU
Subject: [ICLINIC] 2 new USCIS Policy Memos
Importance: High

https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf

https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0161-DACA-Notice-to-Appear.pdf

Daniel M. Kowalski

Editor-in-Chief

***Bender's Immigration Bulletin* (LexisNexis)**

www.bibdaily.com

Twitter: @dkbib

Cell: (512) 826-0323

E-Mail: dkowalski@david-ware.com

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, July 20, 2018 8:31 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] New on Jotwell: Juliet Stumpf reviews Amanda Frost

---------- Forwarded message ---------
From (b) (6)
Date: Fri, Jul 20, 2018 at 8:29 AM
Subject: [immprof] New on Jotwell: Juliet Stumpf reviews Amanda Frost
To: immprof@lists.ucla.edu <immprof@lists.ucla.edu>

https://lex.jotwell.com/modernizing-immigration-enforcement/

Modernizing Immigration Enforcement - Lex

lex.jotwell.com

Amanda Frost, Cooperative Enforcement in Immigration Law, 103 Iowa L. Rev. 1 (2017).Juliet StumpfPublic rhetoric about immigration paints the issues in stark terms. Immigrants are either criminals and terrorists or they are family members, workers, and survivors of persecution. Immigration is either our secret sauce, the key to our national prosperity, or it is the sleeper cell in our midst, the smooth-talking snake. It is about inclusion or exclusion, banishment or return, belonging or outcast. Immigrants are virtual citizens, [...]

(b) (6)

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Widener University Commonwealth Law School

(b) (6)

(b) (6)

(b) (6) [redacted]

(b) (6) [redacted]

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(b) (6) [redacted]

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, July 20, 2018 8:03 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] American Immigration Council and CLINIC Practice Advisory on Pereira v. Sessions

---------- Forwarded message ----------
From: (b) (6)
Date: Friday, July 20, 2018
Subject: [immprof] American Immigration Council and CLINIC Practice Advisory on Pereira v. Sessions
To: "IMMPROF (UCLA) (immprof@lists.ucla.edu)" <immprof@lists.ucla.edu>

Greetings,

The American Immigration Council and CLINIC have issued a practice advisory that provides practitioners with strategies and considerations on *Pereira v. Sessions*. In *Pereira v. Sessions*, the Court held that service of a defective Notice to Appear does cut off eligibility for cancellation of removal. The rationale underlying the Court's decision, however, more broadly affects both ongoing and closed cases initiated by defective Notices to Appear. The practice advisory is available on both CLINIC and the Council's websites.

Also, CLINIC has issued a practice pointer on USCIS's June 28, 2018 NTA guidance memo, which provides summary and analysis as well as practice tips and a chart comparing the new policy with the previous 2011 policy.

In case you missed it, CLINIC also published an Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status. The index includes short descriptions of, and links to, AAO SIJS decisions from 2005 to April 2018 available on the USCIS website, organized by issue type. The goal of this index is to assist practitioners who represent children and youth seeking SIJS. Please complete our short web form available at the above link if you would like a copy of this resource. Please note that this resource is intended for practitioners representing SIJS-eligible children and is not available to federal government employees. Please do not share this resource with others (e.g., attaching to an email, posting on a website, saving to a jointly accessible network, etc.) and instead ask those who wish to obtain the resource to complete our web form to request the resource. Thank you.

Gratefully,

(b) (6)

(b) (6)

Email (b) (6) g

Website: www.cliniclegal.org

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs.

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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, July 26, 2018 11:26 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: Announcing Tempest Tossed: Conversations on Migration and Mobility

---------- Forwarded message ---------
From (b) (6)
Date: Thu, Jul 26, 2018 at 2:15 PM
Subject: [immprof] FW: Announcing Tempest Tossed: Conversations on Migration and Mobility
To: Immigration Law Professors List <immprof@lists.ucla.edu>

Dear all,

Please see announcement below of new podcast produced by the Zolberg Center on Migration and Mobility. (b) (6) hosts.

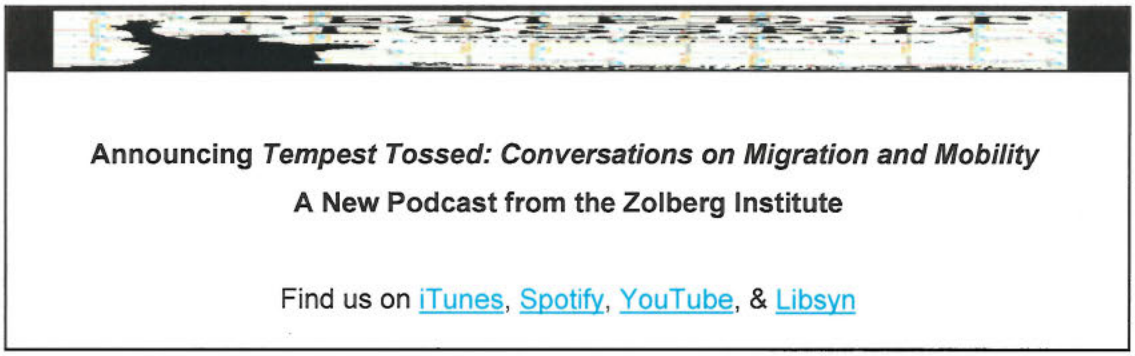
The first episode features guest Denise Gilman on "zero tolerance" and separated children.

This is going to be a great resource.

Best,

(b) (6)

View this email in your browser



Today, we're thrilled to launch *Tempest Tossed: Conversations on Migration and Mobility* - a new podcast on immigration and refugees that goes beyond the predictable soundbites. Join Alex Aleinikoff and guests for in-depth discussion on what's happening on the ground and how to understand current policy debates.

In the first episode, Alex Aleinikoff speaks with Professor Denise Gilman, Director of the Immigration Clinic at the University of Texas at Austin School of Law, about separated children, zero tolerance, and the border.

You can listen on Apple Podcasts, Spotify, or any other of your favorite platforms. Make sure to subscribe so you don't miss an episode!

D

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Noferi, Mark (EOIR)

From: Mark Noferi <marknoferi@gmail.com>
Sent: Monday, July 30, 2018 2:12 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: Statement of Former IJs and BIA Members

---------- Forwarded message ---------
From: **Dan Kowalski** <dkowalski@david-ware.com>
Date: Mon, Jul 30, 2018 at 10:47 AM
Subject: [immprof] FW: Statement of Former IJs and BIA Members
To: immprof@lists.ucla.edu <immprof@lists.ucla.edu>

From: (b) (6) [redacted]
Sent: Monday, July 30, 2018 7:21 AM
To: Dan Kowalski; (b) (6) [redacted]
Subject: Statement of Former IJs and BIA Members

This relates to last Thursday's removal hearing in the remand of *Matter of Castro-Tum*. It is possible that more IJs will sign on.

Attorney Matthew Archambeault is holding a press conference today to address the case.

On Thursday, July 26, EOIR, in a costly and inefficient use of the agency's resources, sent an Assistant Chief Immigration Judge to the Philadelphia Immigration Court to conduct a single preliminary hearing. Although there was no indication of any legitimate basis for doing so, the case had been taken off of the calendar of an experienced Immigration Judge in Philadelphia, apparently for the sole reason that the judge had exercised independent judgment by asking for briefs on the issue of whether the respondent had in fact received notice of the hearing. The Assistant Chief Judge (a part of EOIR's management) ordered the respondent removed in absentia without further inquiry into such question, fulfilling the purpose for which she was sent to Philadelphia.

An independent judiciary is imperative to democracy. Immigration Judges have always struggled to maintain independence while remaining in the employ of an enforcement agency, the Department of Justice, and serving at the pleasure of a political appointee, the Attorney General. Although not entitled to the same due process safeguards as criminal proceedings, the consequences of deportation can be as harsh as any criminal

penalty. As their decisions often have life-or-death consequences, Immigration Judges must be afforded the independence to conduct fair, impartial hearings. For this reason, some important due process safeguards are required in deportation proceedings, and errors should be corrected through the appeals process, not through interference by managers.

Last Thursday's case had been remanded by Attorney General Jeff Sessions. In the absence of another explanation, it would seem that EOIR's management did not believe Sessions' purpose in remanding the case was for an Immigration Judge to then exercise independent judgment to ensure due process. The agency therefore removed the case from the docket of a capable judge in order to ensure an outcome that would please its higher-ups. While as former Immigration Judges and BIA Members with many decades of combined experience, we appreciate the pressures on EOIR's leadership, such interference with judicial independence is unacceptable. EOIR's management exists to fulfill an administrative function, not to impede on the decision-making process of its judges. EOIR more than ever needs leadership with the courage to protect its judges from political pressures and to defend their independence. As a democracy, we expect our judges to reach results based on what is just, even where such results are not aligned with the desired outcomes of politicians.

Hon. Steven Abrams
Hon. Sarah M. Burr
Hon. Jeffrey S. Chase
Hon. Cecelia M. Espenoza
Hon. John F. Gossart, Jr.
Hon. William P. Joyce
Hon. Carol King
Hon. Margaret McManus
Hon. Charles Pazar
Hon. Susan Roy
Hon. Paul W. Schmidt
Hon. Polly A. Webber

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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, July 30, 2018 2:11 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Job Posting: CU Law Civil Practice Clinic
Attachments: Job Announcement_CULaw_Civil Clinic_Fall 2018_with header.pdf

---------- Forwarded message ---------
From: (b) (6)
Date: Mon, Jul 30, 2018 at 10:43 AM
Subject: [immprof] Job Posting: CU Law Civil Practice Clinic
To: ImmProf <immprof@lists.ucla.edu>

The University of Colorado Law School is hiring for a clinical faculty position to begin in Fall 2019. The job description seeks proposed practice areas within a broadly-defined area of civil practice. Asylum and SIJ could be a key focus and indeed served as a key focus for my retiring colleague and the long-time clinic supervisor (b) (6) It is a focus that many students and I personally hope will not get lost with his retirement.

Best wishes,

(b) (6)

(b) (6)

(b) (6)

CU Wolf Law Building | 2450 Kittredge Loop Road | Boulder, CO 80309

(b) (6) | t: (b) (6) | f: 303-492-1200

COLORADO LAW
UNIVERSITY OF COLORADO BOULDER

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COLORADO LAW
UNIVERSITY OF COLORADO **BOULDER**

Clinical Legal Education Program
Robert & Laura Hill Clinical Suite| 404 UCB
Boulder, Colorado 80309-0401
303.492.8126 | 303.492.4587 fax
www.colorado.edu/law

The University of Colorado Law School seeks applicants for a clinical faculty position to focus on court-based, civil legal work.

The new clinical faculty member will replace a retiring faculty member who has been leading a general civil practice clinic. We invite candidates to propose their concept for a court-based, civil practice clinic. We encourage candidates to review other substantive legal areas already offered in Colorado Law's Clinical Program to ensure that proposed projects would not be duplicative.

The position has primary responsibility for supervising students in case or project work, and for organizing and teaching a companion clinical seminar. This is a full-time academic year position. Rank and appointment classification will depend on qualifications and experience.

Candidates must have JD degree and minimum five years practical experience. Prior teaching experience is strongly preferred. Candidates must be licensed to practice law in at least one state and eligible either to sit for the Colorado bar or waive admission into Colorado.

To apply, candidates should mail a letter describing their interest, a description of their proposal for the clinic, kinds of projects they would develop for the clinic, relevant practice experience, and any prior teaching experience, along with resume and names of three references to Ann England, Clinical Professor, University of Colorado Law School, Wolf Law Building, 404 UCB, Boulder, CO 80309-0404 or to (b) (6) Deadline for applications is September 10, 2018, and will be accepted until position is filled. Teaching will begin August 2019.

The University of Colorado is an Equal Opportunity Employer committed to building a diverse workforce. We encourage applications from women, racial and ethnic minorities, individuals with disabilities and veterans. Alternative formats of this ad can be provided upon request for individuals with disabilities by contacting the ADA Coordinator at: (b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, August 16, 2018 4:37 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: Immigration Happy Hour

---------- Forwarded message ----------
From (b) (6)
Date: Thursday, June 21, 2018
Subject: Immigration Happy Hour
To: "Noferi, Mark (EOIR)" <mark.noferi@usdoj.gov>

(b) (6)

On Tue, Jun 19, 2018 at 5:41 PM (b) (6) > wrote:
Hi all,

Reminder that our next Immigration Happy Hour is NEXT FRIDAY!

WHAT: Immigration Happy Hour
WHEN: Friday, June 29, 2018; 6PM - 8PM.
WHERE: Mad Hatter, 1319 Connecticut Ave, Washington, DC 20036. We'll be in the upstairs bar known as the "Up Bar." Problems finding us? Text or call (b) (6) at (b) (6)

Check out the Facebook group here: https://www.facebook.com/groups/1805599063002347/
Check out the Facebook event page here: https://www.facebook.com/events/214185876058771/?ti=cl

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Visit this group at https://groups.google.com/group/immpro-dc.
For more options, visit https://groups.google.com/d/optout.

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, August 23, 2018 8:22 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] DHS/ERO Response to Pereira

---------- Forwarded message ---------
From: (b) (6) >
Date: Thu, Aug 23, 2018 at 7:39 PM
Subject: [immprof] DHS/ERO Response to Pereira
To: IMMPROF (UCLA) (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

For those of you not also on the National Immigration Project (NIP) list, I thought you might be interested in this message shared by a co-director of a nonprofit in the Bay Area. Frustrating, but not surprising --

"As others have probably seen as well, ERO at least in San Diego, LA, and SF is now issuing NTAs with arbitrary dates, such as 8/31/2018, presumably to attempt to address Pereira, without actually confirming a hearing date with the Court. This obviously creates confusion for many respondents. Moreover, the NTAs are not necessarily being promptly filed, so respondents have no way to attempt to change venue, and no way of knowing if they need to travel back across the country for their fake date.

Has anyone confirmed that this in fact a new policy? Is any advocacy being done around it?"

(b) (6)

Golden Gate University, School of Law
You can access my papers on SSRN here.

--
You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.
--
(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, August 27, 2018 8:57 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] (b) (6) Pereira v. Sessions and the Right to Seek Voluntary Departure: Another Reason for the Wide Applicability of Pereira without the Need to Decide the Subject-Matter Jurisdiction Issue

---------- Forwarded message ---------
From: **Dan Kowalski** <dkowalski@david-ware.com>
Date: Mon, Aug 27, 2018 at 11:10 AM
Subject: [immprof] (b) (6) : Pereira v. Sessions and the Right to Seek Voluntary Departure: Another Reason for the Wide Applicability of Pereira without the Need to Decide the Subject-Matter Jurisdiction Issue
To: ICLINIC@LIST.MSU.EDU <ICLINIC@list.msu.edu>, Immprof (immprof@lists.ucla.edu) <immprof@lists.ucla.edu>

(b) (6) Pereira v. Sessions and the Right to Seek Voluntary Departure: Another Reason for the Wide Applicability of Pereira without the Need to Decide the Subject-Matter Jurisdiction Issue

http://lawprofessors.typepad.com/immigration/2018/08/geoffrey-a-hoffman-pereira-v-sessions-and-the-right-to-seek-voluntary-departure-another-reason-for-t.html

(b) (6)

(b) (6)

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, August 27, 2018 8:58 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] FW: SF IJ terminated under Pereira
Attachments: IJ ORDER - SF IJ terminated under Pereira - very clear reasoning - Nameless.pdf

---------- Forwarded message ---------
From: **Dan Kowalski** <dkowalski@david-ware.com>
Date: Mon, Aug 27, 2018 at 4:30 PM
Subject: [immprof] FW: SF IJ terminated under Pereira
To(b) (6)

From(b) (6)
Sent: Monday, August 27, 2018 2:25 PM

Enjoy the IJ's reasoning addressing every bit of the DHS's standard opposition.

(b) (6)

Ph(b) (6)

Cel(b) (6)

Fax 480.718.8616

www.EloyImmigration.com

"*With only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in Complexity*". Castro-O'Ryan, 847 F.2d at 1312 (quoting E. Hull, Without Justice For All 107(1985)).

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
100 MONTGOMERY ST., SUITE 800
SAN FRANCISCO, CA 94104

(b) (6)

In the matter of File [redacted] DATE: Aug 23, 2018

X Unable to forward - No address provided.
Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
100 MONTGOMERY ST., SUITE 800
SAN FRANCISCO, CA 94104

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

__ Other: _____

KRA
COURT CLERK
IMMIGRATION COURT FF

cc (b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

In the Matter of: [redacted] Respondent	Date: AUG 23 2018 File No. [redacted] In Removal Proceedings

Charge: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General

Application: Motion to Terminate

On Behalf of Respondent:
(b) (6)

On Behalf of the DHS:
Shilpa Khagram
Acting Deputy Chief Counsel
Office of the Chief Counsel
100 Montgomery Street, Suite 200
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

Respondent moves to terminate these proceedings on the grounds that the charging document filed by the Department of Homeland Security [DHS] does not provide statutorily required information (date and time of the hearing), and thus fails to meet the statutory requirements for a Notice to Appear [NTA], *see* INA § 239(a)(1), and is consequently insufficient to vest jurisdiction and commence proceedings with the Immigration Court. In response, DHS argues that: (1) the Supreme Court's decision in *Pereira v. Sessions*, ___ U.S. ____, 138 S.Ct. 2105 (2018), was limited to the stop-time rule and does not speak to the viability of an NTA for commencement of proceedings; (2) the NTA in this case is merely defective, and the failure to include the date and time of the hearing in the NTA was cured by issuance of a Notice of Hearing; and (3) the Court has no authority to terminate proceedings absent limited circumstances.

This Court's jurisdiction derives from a clear grant of statutory authority, supported by regulations promulgated by the Attorney General. INA §§ 103(g)(2), 240(a)(1), (b)(1); 8 C.F.R. § 1003.14(a). Jurisdiction vests with the Court when a charging document (either an NTA or an "Order to Show Cause") is filed by DHS. 8 C.F.R. § 1003.14(a). A review of the record in the instant matter reveals Respondent was served with a document titled "Notice to Appear" that

provided information related to statutory requirements in INA § 239(a)(1)(A)-(F), but failed to designate the time/date and place at which the proceedings would be held, as required by INA § 239(a)(1)(G). Exh. 1. Separate from the NTA, an initial Notice of Hearing was served on Respondent by mail to appear before the Court at a designated time, date, and place.

Although DHS is correct that the narrow question before the Court in *Pereira* was whether a document styled as a Notice to Appear stops time for purposes of cancellation of removal, the analysis in *Pereira* necessarily relied on whether a Notice to Appear is valid if it does not contain all the information required under section 239(a)(1). In its discussion and analysis of the stop-time rule, the Supreme Court determined that "[a] putative notice to appear that fails to designate a specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under section [239(a) of the Act].'" *Id.* at 2114. Noting the clarity of the plain language of the statute, the Supreme Court highlighted the time-and-place criteria required by section 239(a)(1)(G)(i), stating that a notice to appear that fails to specify "integral information like the time and place of removal proceedings" deprives the notice to appear of its "essential character." *Id.* at 2116 (citations omitted). Accordingly, the document titled "Notice to Appear" that was filed with the Court in this case is not an NTA under section 239(a)(1). *See also id.* at 2116 (INA § 239(a)(1) "speak[s] in definitional terms, at least with respect to the 'time and place at which proceedings will be held'").

Prior to *Pereira*, many Circuits had determined that the failure to provide the time/date and place of the removal proceedings resulted in a "defective" or "flawed" NTA. *Popa v. Holder*, 571 F.3d 890 (9th Cir. 2009); *Dabebneh v. Gonzales*, 471 F.3d 806 (7th Cir. 2006); *Guamanrrigra v. Holder*, 670 F.3d 404 (2d Cir. 2012); *Haider v. Gonzales*, 438 F.3d 902 (8th Cir. 2006); *Ramos-Olivieri v. Att'y Gen.*, 624 F.3d. 622 (3d Cir. 2010). Under this line of cases, the NTA could be cured under a two-step procedure, often with a subsequently issued Notice of Hearing. A defective NTA, by its definition is an NTA, albeit an imperfect or flawed one. In *Pereira*, the Supreme Court held that a document lacking the time and place notification lacks its essential character and is not an NTA.[1] It is a legal impossibility to "cure" or "perfect" something that does not exist. Furthermore, although the regulations permit DHS to include in the NTA "the time, place and date of the initial removal hearing, *where practicable*," 8 C.F.R. § 1003.18 (emphasis added), the Supreme Court specifically found that these "practical considerations are meritless and do not justify departing from the statute's clear text." *Pereira*, 138 S.Ct. at 2111, 2118.

Finally, DHS argues that the Supreme Court does not give advisory opinions, that the Court did not address termination as a remedy, and that there is no legal authority to terminate. This Court disagrees with the logic presented in these arguments. The question of termination was not before the Supreme Court and therefore, the Court did not reach the issue, in compliance with its role to only address the issue before it. However, the Supreme Court's analysis and conclusion supports Respondent's argument that an "NTA" that does not include the date, time,

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[1] "In the dissent's view, a defective notice to appear is still a "notice to appear" even if it is incomplete—much like a three-wheeled Chevy is still a car. *Post,* at 10–11. The statutory text proves otherwise. Section 1229(a)(1) does not say a "notice to appear" is "complete" when it specifies the time and place of the removal proceedings." *Pereira,* 138 S.Ct. at 2111, 2116.

and place of hearing is not an NTA and accordingly fails to vest jurisdiction with the immigration court. Indeed, the Supreme Court's analysis is not as narrowly drawn as the DHS suggests. *See Pereira*, 138 S.Ct. at 2113-14 ("[a] putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under [INA § 239(a)],' *and so* does not trigger the stop-time rule") (emphasis added); *id.* at 2116 ("when the term 'notice to appear' is used elsewhere in the statutory section, *including* as the trigger for the stop-time rule, it carries with it the substantive time-and-place criteria required by [INA § 239(a)]."") (emphasis added); *id.* at 2118 ("[a] document that fails to include such information is not a 'notice to appear under [INA § 239(a)] *and thus* does not trigger the stop-time rule") (emphasis added). Because the Court lacks jurisdiction, the only remedy would be the filing of a document which would independently comply with the statutory requirements under the INA. DHS has been provided the opportunity to respond to Respondent's Motion and has elected not to file such a document. Absent a statutorily-compliant charging document, this Court has no jurisdiction to move forward and must terminate the improvidently begun proceedings. Such termination is without prejudice, and does not preclude the Department from serving and filing a proper NTA.

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondent's Motion to Terminate be GRANTED.

Elizabeth L. Young
U.S. Immigration Judge

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Wednesday, August 29, 2018 12:13 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Stanford Law Review Online Symposium: call for abstracts

---------- Forwarded message ---------
From: (b) (6)
Date: Tue, Aug 28, 2018 at 6:04 PM
Subject: [immprof] Stanford Law Review Online Symposium: call for abstracts
To:
Cc: (b) (6)

Dear all,

Stanford Law Review Online asked me to share the announcement below, calling for abstracts for an online symposium dedicated to immigration law.

Best (b) (6)

Immigration out of the Headlines

Stanford Law Review Online is now accepting abstracts for proposed essays for an online symposium dedicated to immigration law, which will be published in 2019.

From the travel ban to the separation of families at the border, immigration news stories have dominated media headlines. *Stanford Law Review Online* seeks to publish pioneering, thoughtful, and nuanced legal scholarship that goes beyond the headlines and tackles important but overlooked immigration law issues. Essays might analyze overlooked questions relating to discretion in administrative agency decision-making, the intersection of immigration and the criminal justice system, the detention and bond system, the role of federal courts, or other topics.

How to submit: Interested authors should submit an abstract of up to 500 words and a CV to online@stanfordlawreview.org with the subject line "Immigration Law Online Symposium" by September 30, 2018. Selected authors' completed papers of 3,000 to 5,000 words (including footnotes) will be due to *Stanford Law Review Online* by December 14, 2018. Any questions should be sent to (b) (6) Online Editor-in-Chief, at online@stanfordlawreview.org.

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(b) (6)

Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
phone: (b) (6)
fax: 650 723 4426
--

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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Thursday, August 30, 2018 11:16 AM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] Immigration Legalization Initiatives: Special Issue of the ILR Review

---------- Forwarded message ---------
From: (b) (6)
Date: Thu, Aug 30, 2018 at 10:58 AM
Subject: [immprof] Immigration Legalization Initiatives: Special Issue of the ILR Review
To: (b) (6)

Dear Immprof,

I'm writing to share the August 2018 Special Issue of the ILR Review, which focuses on immigration legalization initiatives cross nationally.

Below is an excerpt from the introduction entitled "Introduction to a Special Issue on the Impact of Immigrant Legalization Initiatives: International Perspectives on Immigration and the World of Work," (authors are (b) (6) (b) (6)

"The articles in this special issue draw on studies of legalization initiatives in major immigrant destinations: Canada, Italy, and the United Kingdom. Together they underscore the importance of cross-national perspectives for understanding the range of legalization programs and their impact on immigrant workers, the workplace, and the labor market"

For more from this special issue, which will be free to read for a limited amount of time, click here.

(b) (6)

(b) (6)

Cornell University

Ives Faculty Building 371

(b) (6)

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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, August 31, 2018 10:52 AM
To: Noferi, Mark (EOIR)
Subject: Re: Register Now for "Agency Adjudication and The Rule of Law" on 9/26

(b) (6)

On Fri, Aug 31, 2018 at 9:36 AM (b) (6) wrote:

THE C. BOYDEN GRAY
Center *for the* Study *of the* Administrative State
ANTONIN SCALIA LAW SCHOOL • GEORGE MASON UNIVERSITY

Dear Mark,

You are invited to the George Mason Law Review's First Annual Symposium on Administrative Law titled **Agency Adjudication and The Rule of Law,** on **Wednesday, September 26, 2018,** at the Antonin Scalia Law School at George Mason University.

The George Mason Law Review and the C. Boyden Gray Center for the Study of the Administrative State are pleased to announce their first annual Administrative Law Symposium. And to inaugurate this series, we are focusing on one of the most fundamental questions of administrative law: What does it mean for agencies to "adjudicate"?

Article III of the Constitution commits "the judicial power" to courts; yet agencies, in exercising the "executive power" to administer federal law on a case-by-case basis, have long adopted quasi-judicial procedures to adjudicate individual matters.

The Administrative Procedure Act of 1946 attempted to clarify the difference between rulemaking and adjudication, and to regularize at least somewhat the process for "adjudication" across agencies. As with so much of the APA, Congress tried to strike a balance between accountability, expertise, and independence. The last consideration took particular prominence when "hearing officers" gave way to "administrative law judges."

Years before the APA, the Supreme Court recognized the fundamental paradox at the heart of agency adjudication, especially when it implicates private rights. Today these issues are once again in the spotlight, in the aftermath of the Supreme Court's new decisions in Lucia and Oil States.

For this symposium, some of the nation's leading scholars of administrative law explore these issues, in a

series of papers to be published in the Law Review. We hope you will join us at the symposium, to discuss these fundamental questions of public administration and the rule of law.

Registration is free and open to the public. For questions about this upcoming event, contact (b) (6) (b) (6) To learn more about the (b) (6) Center, please visit (b) (6) and follow us on Twitter. We hope you will join us for this important and timely discussion on Wednesday, September 26th.

Best regards,

(b) (6)
Director, The C. Boyden Gray Center for the Study of the Administrative State
Antonin Scalia Law School, George Mason University

REGISTER NOW

Agenda

8:15 AM - 9:00 AM : Registration and Breakfast

9:00 AM - 9:10 AM : Welcome

Adam White, Director, The C. Boyden Gray Center for the Study of the Administrative State and Assistant Professor of Law, Antonin Scalia Law School, George Mason University
Gabriella Mahan, Editor in Chief, George Mason Law Review Journal

9:10 AM - 10:35 AM: Panel 1: Agency Adjudication, the APA, and the Rule of Law

Michael Asimow, Visiting Professor of Law, Stanford Law School
Thomas Merrill, Charles Evans Hughes Professor of Law, Columbia Law School
Michael B. Rappaport, Hugh and Hazel Darling Foundation Professor of Law and Director, Center for the Study of Constitutional Originalism, University of San Diego School of Law
Aditya Bamzai, Associate Professor of Law, University of Virginia, School of Law

Moderator: Adam White, Director, The C. Boyden Gray Center for the Study of the Administrative State and Assistant Professor of Law, Antonin Scalia Law School, George Mason University

10:45 AM - 12:00 PM: Panel 2: Public Rights and Private Rights After Oil States

Kent Barnett, Associate Professor of Law, University of Georgia, School of Law
Megan M. La Belle, Professor of Law, Catholic University of America, Columbus School of Law, and Co-Director, Law and Technology Institute
David Wagner, Independent

Moderator: Jennifer Mascott, Assistant Professor of Law, Antonin Scalia Law School, George Mason University

12:00 PM - 1:15 PM: Lunch & Keynote
Richard A. Epstein, Laurence A. Tisch Professor of Law and Director, Classical Liberal Institute, NYU School of Law

1:25 PM - 1:40 PM: Intellectual Property After Oil States
Adam Mossoff, Professor of Law and Co-Founder of the Center for the Protection of Intellectual Property, Antonin Scalia Law School, George Mason University

1:40 PM - 3:00 PM: Panel 3: Administrative Law Judges After Lucia

Jack M. Beermann, Harry Elwood Warren Scholar and Professor of Law, Boston University School of Law
James Heilpern, Law and Corpus Linguistics Fellow, Brigham Young University, J. Reuben Clark Law School
Linda Jellum, Ellison Capers Palmer Sr., Professor of Law, Mercer University, School of Law
Richard J. Pierce, Jr., Lyle T. Alverson Professor of Law, The George Washington University Law School

Moderator: Aaron Nielson, Associate Professor of Law, Brigham Young University, J. Reuben Clark Law School

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When
Wednesday, September 26, 2018
8:15 AM - 3:00 PM

Where
George Mason University
Founders Hall, 3351 Fairfax Drive, Arlington, Virginia 22201, USA

More Information
View Summary

Registration Deadline
Thursday, September 20, 2018

Please respond by clicking one of the buttons below

YES NO

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Tuesday, September 4, 2018 8:13 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: [immprof] RE: Pereira

(b) (6)

---------- Forwarded message ---------
From: (b) (6)
Date: Tue, Sep 4, 2018 at 12:49 PM
Subject: Re: [immprof] RE: Pereira
To: (b) (6)
Cc:
(b) (6)

So i unfortunately had a client who would have greatly benefited from not having a date/time on her NTA. She was given her NTA in 2005 (and then later had an inabsentia removal) but we later got that order Reopened based on ARCG... i was ecstatic about Periera, but then was crushed when i saw the date and time on the NTA.

I think this depended strongly on timeframe and whether they were originally detained when the NTA issued. Detained folks with NTAs issued never had a date/time from my experience, but folks who were released at time of custody review did often have a date and time on their NTA- at least for a period of time.

(b) (6)

On Tue, Sep 4, 2018 at 11:28 AM, (b) (6) wrote:

(b) (6)

After representing hundreds of unaccompanied minors in Michigan and screening over 1,000 more, I cannot remember ever seeing an NTA with the date and time of hearing. The date and time always come later with a notice of hearing.

(b) (6)

(b) (6)

(b) (6)

Michigan State University College of Law

648 North Shaw Lane

East Lansing, MI 48824

(b) (6)

(b) (6)

(b) (6)

From (b) (6)
Sent: Tuesday, September 04, 2018 12:11 PM
To
Cc (b) (6)
Subject: [immprof] Re: Pereira

I know about the reference in the footnote, but my question is if anyone has information from people on the ground. After reviewing a number of Supreme Court decisions, I have found it helpful to have some skepticism about statements of facts made by the Court. **100% is a lot.**

(b) (6)

On Sep 4, 2018, at 3:48 AM, (b) (6) wrote:

That's what government's counsel said at SCOTUS oral argument. (p. 52)
https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.supremecourt.gov

%2Foral_arguments%2Fargument_transcripts%2F2017%2F17-459_1bn2.pdf&data=02%7C01%7Cboswellr%40uchastings.edu%7C9a4145bcefe842dc557508d612540198%7Cd30c700c15b44a2199483d19b1fd607c%7C0%7C0%7C636716549359757091&sdata=%2F9L8eBHpsolDHrXn0g4S1KgwE7UTXDwK88bn0CCBj8I%3D&reserved=0

Best wishes,

(b) (6)

(b) (6)
Defending Vulnerable Populations, Senior Attorney
Training , Litigation, and Support
Catholic Legal Immigration Network, Inc. (CLINIC)*
Phone (b) (6)
(b) (6)
Website: https://na01.safelinks.protection.outlook.com/?url=www.cliniclegal.org&data=02%7C01%7Cboswellr%40uchastings.edu%7C9a4145bcefe842dc557508d612540198%7Cd30c700c15b44a2199483d19b1fd607c%7C0%7C0%7C636716549359767100&sdata=UD0NCur9Om8NSeZBjN3aezModwJr2T1arNk7D%2Bmeoj0%3D&reserved=0
*Working remotely from New York

-----Original Message-----
From: (b) (6)
Sent: Tuesday, September 4, 2018 1:30 AM
To (b) (6)
Subject: [immprof] Pereira

In Pereira the Court states that nearly 100% of cases involve those which commenced by filing an NTA without a time or place for the hearing. Are we sure that this is an accurate statement?

(b) (6)

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--
You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.

--
You received this message because you are subscribed to the Google Groups "ImmProf" group.
To unsubscribe from this group and stop receiving emails from it, send an email to immprof+unsubscribe@lists.ucla.edu.

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Sunday, August 6, 2017 4:54 PM
To: Noferi, Mark (EOIR)
Subject: (b) (6)

--
(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, August 7, 2017 4:52 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: Invitation to speak on "Current Issues in Immigration"
Attachments: Noferi invite.docx

---------- Forwarded message ---------
From (b) (6)
Date: Tue, Jul 25, 2017 at 11:29 AM
Subject: Invitation to speak on "Current Issues in Immigration"
To
Cc (b) (6)

Dear Mr. Noferi:

Former Senator Carl Levin and the Levin Center at Wayne Law invite you to participate as a panelist at a symposium on "Current Issues in Immigration Policy." It will be held at the Wayne State University Law School in Detroit, Michigan, on Friday, November 10th. Please see the attached invitation from Senator Levin for more details.

We hope you can join us!

(b) (6)

--
(b) (6)

July 25, 2017

Dear Mr. Noferi:

I am writing to invite you to serve as a panelist at the Levin Center's symposium on "Current Issues in Immigration Policy," Friday, November 10, 2017, at Wayne State University Law School in Detroit, Michigan. With the many legal and public policy questions on immigration so visible, now, we thought it would be helpful to host a civil discussion of the pros and cons and legal implications of the choices our political leaders face. I very much hope that your distinguished voice will be part of the mix.

The topics to be taken up are: the "travel ban," sanctuary cities and immigration federalism, and detention in deportation proceedings. Each of these will form the basis for a 90 minute panel discussion. There will also be a luncheon presentation. Based on your experience and publications, our hope is that you will be part of the detention panel which will be moderated by Professor Rachel Settlage, a member of the Wayne Law faculty. The symposium will be videotaped and available on the Levin Center web site.

The Levin Center will cover your reasonable travel expenses and lodging for one night in accordance with Wayne University guidelines. We will not be offering an honorarium. There will be a welcome dinner on Thursday evening for the panelists; we hope you will be able to attend.

The Levin Center at Wayne Law, formed in 2015, sponsors a number of activities, including conferences, trainings, research, academic courses and internships, to promote good governance and civil discourse and to ensure that public and private institutions operate with integrity, transparency and accountability. With that goal in mind, the November symposium will feature participants with a variety of experience and with different points of view. I invite you to go to visit our website at law.wayne.edu/levincenter.

Thank you for considering this invitation. One of our faculty members will be in touch with you shortly to follow up. In the meantime, don't hesitate to contact Linda Gustitus, Levin Center Washington Co-Director, at 202-557-8867, or via email linda.gustitus@wayne.edu if you have any questions.

Sincerely,

Carl Levin, Chair, Levin Center at Wayne Law

Noferi, Mark (EOIR)

From:	(b) (6)
Sent:	Tuesday, August 22, 2017 6:52 PM
To:	Noferi, Mark (EOIR)
Subject:	Fwd: Visit in November
Follow Up Flag:	Follow up
Flag Status:	Flagged

---------- Forwarded message ---------
From: (b) (6)
Date: Wed, Aug 9, 2017 at 9:09 AM
Subject: Visit in November
To: (b) (6)

Hi (b) (6)
I hope you are having a nice summer. I'm hoping we can schedule a visit for you at the law school in Harrisburg. I'm thinking November would be good, because my immigration law students will have almost a whole semester under their belt. On Wednesdays I teach immigration law from 3-4:25. It would be great if you could visit with my class, and then maybe we could do another event from 5-6. It could be a CLE if that works for you. Or, we could open up my class time to all students.

Is there a Wednesday in November that would work? I can offer you dinner and a hotel for the Wednesday night.

(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Wednesday, November 22, 2017 5:12 PM
To: Noferi, Mark (EOIR)
Subject: (b) (6) Does the Administrative Procedure Act authorize national injunctions?

Follow Up Flag: Follow up
Flag Status: Flagged

(b) (6) **Does the Administrative Procedure Act authorize national injunctions?**
// **The Volokh Conspiracy**

Injunctions are remedies given by courts. They are orders for the defendant to do or refrain from doing some act. Traditionally, injunctions have protected the plaintiff, but only the plaintiff — injunctions haven't protected people who aren't parties to the case. But federal judges now sometimes give "national injunctions." National injunctions prohibit the federal government from enforcing a law or regulation against *anyone*, not just against the plaintiff. Examples include the national injunctions against President Barack Obama's signature immigration initiative and against President Trump's order restricting travel from certain countries. National injunctions are becoming routine in the federal courts.

One argument given for national injunctions is the Administrative Procedure Act. This is a major statute from 1946 that establishes, among other things, how judges review the work of administrative agencies. The argument is, in essence, that the APA tells judges to "hold unlawful and set aside" illicit agency actions, and federal judges are simply following that command when they issue national injunctions. That argument is attractive to some, because it promises to help us sort national injunctions into "good" and "bad" categories. It is especially attractive to Republican partisans, because the national injunctions against the Obama administration tended to rely on the APA, but for technical reasons, the national injunctions against the Trump administration have not tended to rely on the APA.

But there are several difficulties with the APA-made-me-do-it argument for the national injunction.

First, to find support for the national injunction in the APA is anachronistic. There were no national injunctions before the APA was enacted. It would be very odd for Congress to slip into the APA an authorization for an unheard-of and dramatic new remedy. As Justice Antonin Scalia said, "Congress, . . . does not, one might say, hide elephants in mouseholes."

Second, the best argument for finding a basis for the national injunction in the APA is the "set aside" language. But on closer inspection, that doesn't turn out to be a very strong argument. "Set aside" was technical language, it seems, for reversing a judgment (see *Morgan v. Daniels*). That fits with the expectation, when the APA was enacted, that federal agencies would typically make policy through adjudication, not through general rule-making (as discussed in this excellent article by Reuel Schiller). If agencies were expected to make policy through adjudication, and courts were supposed to review the actions of agencies, it makes complete sense to use a term for reversing judgments ("set aside"). And reversing a judgment has never meant the same thing as issuing an injunction, which is an *in personam* order enforceable by contempt.

The trouble, of course, is in making sense of what a phrase used for reversing judgments ("set aside") means when the agency action is a rule. There are good reasons to think it would mean "don't apply the rule," not "enjoin enforcement of the rule everywhere." One is that this is the traditional conception of what judges do to unconstitutional statutes and unlawful rules — not apply them. Only later, after the APA is enacted, does the idea of judges "striking down" statutes and rules become more prevalent. Second, the APA says that what judges are to "hold unlawful and set aside" is "agency action, findings, and conclusions." It would be silly to think the judge is supposed to enjoin findings and conclusions. And if "set aside" doesn't mean "enjoin" for findings and conclusions, it is unlikely to have that meaning for agency actions. Otherwise, it would be a zeugma — not impossible, but rather unlikely. Much more probable: "set aside" does not refer to injunctions, but instead to ignoring the work of an agency that is inconsistent with law. If so, the verbal phrase can have the same sense for all three objects — "agency action, findings, and conclusions." This meaning works no matter whether the agency action is an adjudication or a rule.

Third, if the APA did *authorize* national injunctions, it did more than that: It *required* them. The APA instructs courts to set aside unlawful agency action; it doesn't just give them permission. But if "set aside" means "enjoin the enforcement everywhere," then it is passing strange that for several decades after the APA was enacted essentially no one thought that it required national injunctions. I am aware of no national injunctions before the 1960s, and only one before the 1970s.

In other words, to believe the APA authorizes national injunctions, one would have to accept that (a) Congress used familiar words that were not about injunctions ("set aside") (b) in order to require federal courts to give a dramatic new kind of injunction, (c) that Congress forgot to tell anyone, and (d) that no one knew about it. Occam's razor would suggest a simpler explanation: The APA didn't require national injunctions.

Indeed, unless the APA is clear on the question, there is no authorization of the national injunction. The U.S. Supreme Court has held that statutes shouldn't be read to abrogate long-standing remedial principles without a clear statement to that effect (*Nken v. Holder*). The principle that injunctions protect the plaintiff, rather than protecting non-parties, is based on centuries of equitable practice. Nothing in the APA is even remotely close to a clear statement that would establish a contrary principle.

Finally, even if the APA did authorize national injunctions, there is a constitutional problem. A mere statute cannot grant to the courts a power that lies beyond the "judicial Power." I put the point this way in a forthcoming article (with supporting citations):

> Article III of the Constitution of the United States confers the "judicial Power." This is a power to decide a case for a particular claimant. Indeed, "all challenges to statutes arise when a particular litigant claims that a statute cannot be enforced against her." This claimant-focused understanding of the judicial power has implications not only for who can sue in federal court, but also for what remedies the federal courts have authority to give. On this understanding, Article III defines the judicial role as "redress[ing] an injury resulting from a specific dispute." Once a federal court has given an appropriate remedy to the plaintiffs, there is no longer any case or controversy left for the court to resolve. The parties have had *their* case or controversy resolved. There is no other. The court has no constitutional basis to decide disputes and issue remedies for those who are not parties. . . .
>
> In short, Article III gives the judiciary authority to resolve the disputes of the litigants, not the disputes of others. Article III gives the judiciary authority to remedy the wrongs done to those litigants, not the wrongs done to others.

Judges can, and indeed must, reverse agency action inconsistent with law. When they do so, their decisions are precedents that will apply in other cases. But what judges should not do is issue injunctions that protect non-parties. Nothing about that conclusion changes because of the APA.

If there is a good case to be made for the national injunction — and I don't think there is — it has to rest on some other foundation than the APA. Such a case would need to rest on arguments about the scope of the "judicial Power," the equitable authority of federal courts, and what counts as good policy in a system of distributed judicial decisionmaking.

Read in **my feedly**

Sent from my iPad

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, February 16, 2018 1:13 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: Immigration Law Valentines

---------- Forwarded message ---------
From: (b) (6)
Date: Fri, Feb 16, 2018 at 1:01 PM
Subject: Immigration Law Valentines
To (b) (6)

We're geeks, clearly.

http://lawprofessors.typepad.com/immigration/2018/02/happy-valentines-day-from-northeastern-law.html

===
(b) (6)
J.D. Candidate, Northeastern University School of Law, 2018
(b) (6) | linked in
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(b) (6)

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Monday, July 16, 2018 7:16 AM
To: Noferi, Mark (EOIR)
Subject: Morello

https://www.indyweek.com/news/archives/2018/07/13/raleigh-immigration-attorney-gets-2510-fine-for-texting-in-court

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, June 15, 2018 9:13 PM
To: Noferi, Mark (EOIR)
Subject: Reading list
Attachments: ImmProf and IClinic Immigration Reading and Resource List June 2018.docx

Immigration Reading and Other Immigration Related Resources
June 2018

This list is a compilation of recent suggestions collected from members of the IClinic listserv, together with a list of immigration-related books compiled in 2017 by Galya Ben-Arieh Ruffer and Jenny Moore. Any descriptions or comments were provided by the person suggesting the book.

Fiction

- Wendi Adelson, *This Is Our Story* (2013)
- Sulaiman Addonia, *The Consequences of Love* (2008)
- Chimamanda Ngozi Adichie, *Americanah* (2013)
- Rudolfo Anaya, *Bless Me Ultima* (1972)
- Avi, *Beyond the Western Sea* (1996), (three part young adult series; starving Irish children stow away to get to the US during the 1850s . . . and encounter the hatred of the Know-Nothings in Lowell MA.)
- NoViolet Bulawayo, *We Need New Names* (2013)
- Lan Cao, *Monkey Bridge* (1998) (Vietnamese) (amazing writer who is also a law professor)
- Abraham Cahan, *The Rise of David Levinsky* (1917)
- Sandra Cisneros, *The House on Mango Street* (1991)
- Chris Cleave, *Little Bee* (aka The Other Hand)(2008) -- a story about a Nigerian asylum-seeker and a British magazine editor, who meet during the oil conflict in the Niger Delta, and are re-united in England several years later.
- Vaness Diffenbaugh, *We Never Asked for Wings* (2013)- It is a beautifully written story of a Mexican-American teenager and his undocumented girlfriend and their families' struggles in present-day California.

- Bharati Mukherjee, *Jasmine* (1999).
- Viet Thanh Nguyen, *The Refugees* (2017)(short story collection).
- Julia Otsuka, *The Buddha in the Attic* (2011)- picture brides and Japanese internment
- Linda Sue Park, *A Long Walk To Water* (2010)
- Mario Puzo, *The Fortunate Pilgrim* (1965)(novel based on his mother's immigration story and one he preferred over the Godfather)
- O.E. Rolvag, *Giants in the Earth* (1924)
- Shyam Selvadurai, *The Hungry Ghosts* (2013)
- Upton Sinclair, *The Jungle* (1906).
- Gary Shteyngart, *The Russian Debutante's Handbook* (2002), in which the main character works at a HIAS-like organization handling asylum claims.
- Burhan Sonmez, *Istanbul Istanbul* (2015).
- Hector Tobar, *The Tattooed Soldier* (1998).
- Monique Troung, *Book of Salt* (2004)(novel from the perspective of Vietnamese cook of Gertrude Stein in Paris)
- Deepak Unnikrishnan, *Temporary People* (2017)
- John Vaillant, *The Jaguar's Children* (2015)—an amazing and entirely new take on crossing the U.S.-Mexican border. It is gripping, moving and real--and beautifully written. I urge folks on this list to read it--and order it locally if you can to support the future of something we all love--cool little book stores! And for those of you who have a few minutes, please let me know what you think after you read this remarkable book. (Roxie Bacon)

the community and the government's policies regarding the use of such raids in the enforcement of immigration laws.

- Katherine Boo, *Beyond the Beautiful Forevers – Life, Death and Hope in a Mumbai Undercity* (2012)

- Rachel Calof, *Rachel Calof's Story: Jewish Homesteaders on the Northern Plains* (1995).

- Ariel Dorfman, *Heading South, Looking North* (1998)

- Edwidge Dandicat, *Brother, I'm Dying* (2007)

- Dave Eggers, *Zeitoun* (2009)– Post Katrina immigration detention; Zeitoun is non-fiction, but it reads like a novel.

- Ann Fadiman, *The Spirit Catches You And You Fall Down: A Hmong Child, Her American Doctors, And The Collision Of Two Cultures* (1997). This book explores the cross cultural difficulties that a Hmong refugee family and medical care providers in California face in trying to help an epileptic girl.

- Eva Hoffman, *Lost in Translation: Life in a New Language* (1989)

- Irving Howe, *World of our Fathers: The Journey of the East European Jews to America and the Life They Found and Made* (1976)(traces the story of Eastern Europe's Jews to America over four decades).

- Sonia Nazario, *Enrique's Journey: The Story Of A Boy's Dangerous Odyssey To Reunite With His Mother* (2006). Based on a Pulitzer Prize winning series of LA Times articles, the book chronicles the journey of a boy from Honduras to the United States.

- WG Sebald, *The Emigrants* (1992)(collection of narratives)

- Gary Shteyngart, *Little Failure* (2014) memoir that tells the story of what it was like to be a Russian Jewish immigrant in New York in the 1980s. He is such a great writer both books are a delight to read.

toss it -still warm- to the migrants who travel atop the freight train The Beast as it makes it way to the U.S.; available on YouTube and iTunes)

- *Food Chains* (2014), documentary about abuse of farmworkers in the food industry and their fight to improve working conditions; available on Hulu, Netflix and Amazon

- Kartemquin Films, PBS miniseries, the New Americans, http://www.pbs.org/independentlens/newamericans/
  As a compilation of five different immigrant/refugee stories, the series has lots of "teaching moments" for immigration law profs - including a consular officer in Juarez turning down part of a Mexican family for not having enough income to pass the public charge exclusion - and the young son bursts into tears. This IS a documentary, after all - it's real! In my fall course, I use the segment which shows an Ogoni (Nigerian) family in a UNHCR refugee camp in Benin before they board the bus to start their journey to Chicago. The 7 hours of film are now well-indexed and you can jump between stories or follow one story through all or part of its development. (Susan Gzesh)
  Here's a link to the film which can be ordered directly from KTQ: http://kartemquin.com/films/the-newamericans

- PBS, The American Experience, The Chinese Exclusion Act (2018), http://www.pbs.org/wgbh/americanexperience/films/chinese-exclusion-act/

- *Who Killed Vincent Chin* (1987) documentary about the horrible hate crime murder of the Chinese American killed because white autoworkers thought he was Japanese, and blamed him for the decline of Detroit's fortunes.

Suggested Readings for Immigration Law/Clinic Students Under Trump

- The Immigration Law teaching guide from the Guerilla Guides has some great non-traditional teaching resources (2017): https://guerrillaguides.wordpress.com/2017/09/05/no-7-immigration-law/

- Sarah Stillman, *When Deportation is a Death Sentence*, The New Yorker (Jan. 15, 2018), https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence

- *Under A Trump Proposal, Lawful Immigrants Might Shun Medical Care*, NPR (May 10, 2018), https://www.npr.org/sections/health-shots/2018/05/10/609758169/under-a-trump-proposal-lawful-immigrants-might-shun-medical-care

- *Deportation Raids Are a Public Health Crisis* (May 12, 2018) https://truthout.org/articles/deportation-raids-are-a-public-health-crisis/

- *DHS proposal would change rules for minors in immigration detention*, Washington Post (May 9, 2018) https://www.washingtonpost.com/local/immigration/dhs-proposal-would-change-rules-for-minors-in-immigration-detention/2018/05/09/267af486-4f00-11e8-b725-92c89fe3ca4c_story.html?utm_term=.2a250c1f1332

Noferi, Mark (EOIR)

From: (b) (6)
Sent: Friday, September 8, 2017 9:13 PM
To: Noferi, Mark (EOIR)
Subject: Fwd: Blogging Exec. Order & GAO Asylum Fraud Study

While Justice Kagan's opinion did not definitively comment on the legal status of this false statement, the opinion left the strong impression that the statement was both egregiously false and material. A recent study by the Government Accountability Office (GAO) demonstrated that such fraud is sadly not an isolated occurrence. As a longtime immigration lawyer, I'm well aware of the problem that the GAO report documented: asylum and refugee processing hinges on the statements of applicants, and those applicants are human beings who sometimes surrender to the temptation to deceive others. As the *Maslenjak* case demonstrates, asylum adjudicators do not always spot such attempts at deception. Conflating perpetrators and victims of persecution is, in the words of 8 U.S.C. § 1182(f), "detrimental to the interests of the United States."

(b) (6)

---------- Forwarded message ----------
From: (b) (6)
Date: Fri, Sep 8, 2017 at 5:40 PM
Subject: Blogging Exec. Order & GAO Asylum Fraud Study
To (b) (6)

Mark: Here's a post on the latest 9th Cir. ruling re the Executive Order Protecting the Nation from Foreign Terrorist Entry. The post cites the GAO asylum study: https://www.lawfareblog.com/ninth-circuit-protects-refugees-assurances-sponsorship

Ninth Circuit Protects Refugees with Assurances of Sponsorship

www.lawfareblog.com

The Ninth Circuit held on Thursday that refugees with sponsorship assurances from U.S. resettlement agencies were exempt from President Trump's revised immigration executive order.